

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

**Report and Recommendations of the Session of the Sub-Committee on Accreditation
(SCA)**

Geneva, 29 March -1 April 2010

1. BACKGROUND

- 1.1. In accordance with the Statute (attached as Annex I) of the International Coordinating Committee of National Institutions for the Protection and Promotion of Human Rights (ICC), the Subcommittee on Accreditation (SCA) has the mandate to consider and review applications for accreditation, re-accreditation and special or other reviews received by the National Institutions and Regional Mechanisms Section (NIRMS) of the Office of the United Nations High Commissioner for Human Rights (OHCHR) in its capacity as the ICC Secretariat, and to make recommendations to the ICC Bureau members with regard to the compliance of applicant institutions with the Paris Principles (attached as Annex 2). The SCA assesses compliance with the Paris Principles in law and in practice.
- 1.2. In accordance with the SCA Rules of Procedure, the SCA is composed of NHRI representatives from each region: Togo (Chair) for Africa, Canada for the Americas, the Republic of Korea for Asia-Pacific, and Germany for Europe.
- 1.3. The SCA convened from 29 March to 1 April 2010. OHCHR participated as a permanent observer and in its capacity as ICC Secretariat. In accordance with established procedures, regional coordinating bodies of NHRIs were invited to attend as observers. The SCA welcomed the participation of a representative of the Secretariat of the Asia Pacific Forum of NHRIs, the European Coordinating Committee, the Network of African NHRIs and the ICC representative in Geneva.
- 1.4. Pursuant to article 10 of the Statute, the SCA considered applications for accreditation from the NHRIs of Scotland and Serbia.
- 1.5. Pursuant to article 15 of the Statute, the SCA also considered applications for re-accreditation from the NHRIs of Algeria, Cameroon, The Maldives, Slovenia, The Netherlands and Switzerland.
- 1.6. Pursuant to article 17 of the Statute, the SCA reviewed certain issues regarding the NHRIs of Greece, Nepal and Qatar.
- 1.7. The SCA also considered issues of concern regarding the NHRIs of Azerbaijan, Great Britain, Honduras, Niger and Republic of Korea.
- 1.8. In accordance with the Paris Principles and the ICC SCA Rules of Procedure, the classifications for accreditation used by the SCA are:
 - A: Compliance with the Paris Principles;

- B:** Not fully in compliance with the Paris Principles or insufficient information provided to make a determination;
- C:** Non-compliance with the Paris Principles.

1.9. The General Observations (attached as Annex 3), as interpretative 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 SCA in its determination of new accreditation applications, re-accreditation applications or other review:
 - i) If an institution falls substantially short of the standards articulated in the General Observations, it will be open for the SCA to find that it was not Paris Principle compliant.
 - ii) If the SCA 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 SCA 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 SCA to interpret such lack of progress as non-compliance with the Paris Principles.

1.10. At the November 2009 ICC Bureau meeting, Bureau members made suggestions to improve the accreditation process, including the development and use of General Observations. After consideration and discussion of these recommendations, the SCA decided to embark on a review of the ICC General Observations. At this session, the SCA reviewed a discussion paper on General Observations prepared by Canada and reviewed by APF and OHCHR (attached as Annex 4). The Working Group on the revision of General Observations welcomes input and suggestions from ICC members and others on the content of the review undertaken by the Working Group.

1.11. The SCA notes receipt of the draft compendium of the SCA rules and working methods¹ as prepared by the Secretariat and Canada (attached as Annex 5).

1.12. The SCA notes that when specific issues are raised in its report in relation to accreditation, re-accreditation and other review, NHRIs are required to address these issues in any subsequent application or other review.

1.13. The SCA encourages all accredited NHRIs to inform the ICC Bureau at the first available opportunity about circumstances that would negatively affect their ability to meet the standards and obligations of the Paris Principles.

¹ Including ICC Statute provisions on the SCA; Rules of Procedures of the SCA; new procedures adopted by the SCA from October 2007 - November 2008; implementation of new procedures from the SCA report of March 2009; and procedural issues in the ICC General Observations as per March 2009 SCA report.

- 1.14.** When the SCA declares its intention to consider particular issues within a specified time-frame, the outcome of the review may lead to a recommendation that may affect the accreditation status. In the event additional issues arise during the course of the review, the SCA will so notify the NHRI.
- 1.15.** Pursuant to Article 12 of the Statute, where the SCA comes to an accreditation recommendation, it shall forward that recommendation to the ICC Bureau whose final decision is subject to the following process:
- i) The recommendation of the SCA shall first be forwarded to the applicant;
 - ii) An applicant can challenge a recommendation by submitting a written challenge to the ICC Chairperson, through the ICC Secretariat, within twenty eight (28) days of receipt.
 - iii) Thereafter the recommendation will be forwarded to the members of the ICC Bureau for decision. If a challenge has been received from the applicant, the challenge together with all relevant material received in connection with both the application and the challenge will also be forwarded to the members of the ICC Bureau;
 - iv) Any member of the ICC Bureau who disagrees with the recommendation shall, within twenty (20) days of its receipt, notify the Chair of the SCA and the ICC Secretariat. The ICC Secretariat will promptly notify all ICC Bureau members of the objection raised and will provide all necessary information to clarify that objection. If within twenty (20) days of receipt of this information at least four members of the ICC Bureau coming from not less than two regional groups notify the ICC Secretariat that they hold a similar objection, the recommendation shall be referred to the next ICC Bureau meeting for decision;
 - v) If at least four members coming from two or more regional groups do not raise objection to the recommendation within twenty (20) days of its receipt, the recommendation shall be deemed to be approved by the ICC Bureau;
 - vi) The decision of the ICC Bureau on accreditation is final.
- 1.16.** Pursuant to Article 18 of the Statute, in cases where the SCA considers a recommendation that would serve to remove accredited status from an applicant institution, the applicant institution is informed of this intention and given the opportunity to provide in writing, within one year of such notice, the documentary evidence deemed necessary to establish its continued conformity with the Paris Principles. The concerned institution retains its “A” status during this period.
- 1.17.** The SCA continued to consult with concerned NHRIs, where necessary, during its session. Prior to the session, all concerned NHRIs were requested to provide a name and phone number in case the SCA needed to contact the Institution. In addition, OHCHR desk officers and, as appropriate, OHCHR field officers were available to provide further information, as needed.
- 1.18.** The SCA acknowledges the high degree of support and professionalism of the staff of the ICC Secretariat (OHCHR National Institutions and Regional Mechanisms Section).
- 1.19.** The SCA shared the summaries prepared by the Secretariat with the concerned NHRIs before the consideration of their applications and they provided comments on
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them in one week. All comments received, together with the summaries, were then sent to the members of the SCA. As in previous cases, once the recommendations of the SCA are adopted by the ICC Bureau, the summaries and the comments and the statement of compliance will be posted on the NHRI Forum (www.nhri.net). The summaries are only prepared in English, due to financial constraints.

- 1.20. The SCA considered information received from civil society. The SCA shared that information with the concerned NHRIs and considered their responses.

2. SPECIFIC RECOMMENDATIONS – ACCREDITATION APPLICATIONS

2.1. Scotland: Scottish Human Rights Commission (SHRC)

Recommendation: The SCA recommends that the SHRC be accredited with **A status**.

The SCA recognises:

1. The unique situation of the United Kingdom of Great Britain and Northern Ireland that results in separate and distinct jurisdictions for each of the 3 NHRIs existing in the country, and acknowledges correspondence from the government of the United Kingdom to this effect;
2. The existence of a comprehensive agreement indicating the respective demarcation of jurisdiction, the modalities of cooperation between the 3 institutions, and the interaction with the ICC with due respect to the ICC Rules of Procedure and General Observations;
3. The Commission has now been in operation and has provided documentation to that effect, specifically the annual report for 2008-2009 and a report on activities conducted between 31 March 2009 and 31 January 2010 that demonstrated its operational effectiveness. The SCA looks forward to the imminent publication of the SHRC's second annual report that will be presented before the Scottish Parliament on 15 July 2010.

The SCA also notes that limitations on the staffing and resources of the SHRC in its establishment period may be such as to restrict its operations in the future. It draws the SHRC's attention to Paris Principle B.2 and General Observation 2.6, which highlight the need for an appropriate infrastructure and funding adequate to fulfil its mandate.

2.2. Serbia: Protector of Citizens of the Republic of Serbia (PCRS)

Recommendation: The SCA recommends that the Protector of Citizens of the Republic of Serbia (PCRS) be accredited with **A status**.

The SCA notes with appreciation the PCRS's purposive and expansive interpretation of its mandate, while also acknowledging the difficult circumstances under which the PRCS has been operating, particularly with regard to limitations in office space and human resources. The SCA also notes that as the PCRS will be operating from new premises, the PCRS intends to urgently fill existing staff vacancies in order to facilitate a reduction in the backlog of cases.

The SCA also:

1. Notes the PRCS founding law does not make provision for it to interact with civil society organizations or the international human rights system. The SCA therefore draws the attention of the PRCS to General Observation 1.4 on “Interaction with the International Human Rights System and 1.5 on “Cooperation with other human rights institutions”, and encourages it to seek advice and assistance from OHCHR, the ICC and the regional coordinating committee regarding possible amendments to its legislation.
2. Acknowledges the concerns expressed by the PCRS that the salary levels applicable to the staff of the PCRS may impact on its future capacity to employ and retain staff. In this regard the SCA draws the attention of the PCRS to Paris Principle B.2, which recognises that fundamental to ensuring the independence and efficient functioning of an NHRI is the provision of adequate resources.² The PCRS should be resourced in such a manner as to permit the employment and retention of staff with the requisite qualifications and experience to fulfill its mandate. Their terms and conditions should be equivalent to staff with similar responsibilities and qualifications employed in other independent agencies of the state.
3. Notes that the PCRS may be appointed the National Preventative Mechanism (NPM) under the Optional Protocol to the Convention Against Torture (OPCAT), and wishes to draw the attention of the PCRS to General Observation 2.6 “Adequate Funding” and to the Sub-Committee on the Prevention of Torture’s Preliminary Guidelines for the NPMs, the latter of which states that adequate resources should be provided for work associated with this role.
4. Wishes to encourage the institution to continue to work closely with the United Nations Office of the High Commissioner for Human Rights (OHCHR) - both through its National Institutions and Regional Mechanisms Section and the Human Rights Adviser in Serbia - as well as with the European bodies, in light of Paris Principle A.3(e) on the NHRI’s responsibility “to cooperate with the United Nations and any other agency in the United Nations system, the regional institutions (...).”

3. SPECIFIC RECOMMENDATIONS – RE-ACCREDITATION APPLICATIONS

3.1. The Maldives: Human Rights Commission of The Maldives (HRCM)

Recommendation: The SCA recommends that the HRCM be accredited with **B Status**.

The SCA notes with great appreciation:

1. The work undertaken by the HRCM in pursuing its mandate to promote and protect human rights in the Maldives, while continuing to improve the strength and capacity of the staff and the institution.
2. The HRCM’s constructive approach and advocacy in seeking amendments to its enabling legislation to address concerns expressed by the SCA in April 2008.

² B.2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence

Furthermore, the SCA notes the HRCM has assumed the role of the National Preventive Mechanism under Optional Protocol to the Convention Against Torture (OPCAT) and notes the good work already undertaken, particularly in relation to monitoring places of imprisonment and detention.

The SCA raises the following concerns:

3. The founding legislation continues to provide that all members of the Commission must be Muslim. In accordance with earlier recommendations, the SCA reiterates the need for the removal of this clause in order to comply with the requirements of the Paris Principles, referring in particular to Paris Principle B.1 and General Observation 2.1 “Ensuring pluralism”, and noting that the existing requirement discriminates against other religious minorities. The SCA notes the concern expressed by the Special Rapporteur on the Freedom of Religion or Belief on the legislation limiting the eligibility for certain public posts to Muslims, including the Human Rights Commission Act and by the Citizenship Law, which stipulates that only Muslims can apply for Maldivian citizenship. (2007-A/HRC/4/21/Add.3)
4. The HRCM may be interpreting its mandate in a manner inconsistent with international human rights law, particularly with regard to recognised protection against all forms of cruel, inhuman or degrading treatment or punishment. The HRCM is encouraged to advocate in support of all fundamental rights and freedoms.

The SCA makes the following observation:

5. While the HRCM previously received additional funding to undertake the NPM role, no such funding has been made available in the current year. The SCA highlights the need for institutions nominated as a NPM to be equipped with adequate resources in order to ensure the gradual and progressive realization of the improvement of the organization’s operations and the fulfilment of its mandate. The SCA refers the HRCM to General Observation 2.6 “Adequate Funding” and to the Sub-Committee on the Prevention of Torture’s Preliminary Guidelines for the NPMs, the latter of which states that adequate resources should be provided for work associated with this role.

The SCA encourages the HRCM to continue its endeavours in pursuing legislative amendments and requests that it re-submit its accreditation application when the concerns outlined above have been addressed.

3.2. Algeria: Commission Nationale Consultative de Promotion et de Protection des Droits de l’Homme (CNCPPDH)

Recommendation: The SCA recommends, pursuant to Article 16.3 of the ICC Statute, that consideration of CNCPPDH be **deferred** to its next session.

The SCA notes with great appreciation the work undertaken by the CNCPPDH in pursuing amendments to its enabling legislation to strengthen its compliance with the Paris Principles.

However, the SCA notes that the revision of the founding law did not sufficiently address a range of issues fundamental to compliance with the Paris Principles. The SCA therefore raises the following concerns:

1. The Commission is required to report to the President of the Republic, rather than to the Parliament. The Commission's reports are neither widely circulated, discussed nor considered by governmental bodies or parliament. The SCA refers to General Observation 1.6 "Recommendations by NHRIs" and refers to the concerns of the Human Rights Committee (CCPR/C/DZA/CO/3) and Committee Against Torture (CAT/C/DZA/CO/3) about the accessibility of information on the work of the Commission.
2. While the legislation establishes a selection committee to consider the appointment of members, the final selection and the appointment of members still remains with the President of the Republic. The amended legislation fails to establish a clear, transparent and participatory selection process, and does not establish clear and objective grounds for the dismissal of members as is required by the Paris Principles. The SCA refers to General Observations 2.1 and 2.2, respectively "Ensuring pluralism" and "Selection and appointment of the governing body". It also refers to General Observation 2.9 "Guarantee of tenure for members of governing bodies".
3. There is no legislative provision regarding the recruitment of staff. The CNCPPDH failed to provide sufficient information on its human resources, including staffing levels and secondments. The SCA refers to General Observations 2.4 "Staff by secondment" and 2.7 "Staff of an NHRI".
4. The need for the CNCPPDH to receive adequate funding to allow it to effectively perform its functions. The SCA refers the CNCPPDH to General Observation 2.6 "Adequate Funding".

The SCA also notes:

5. That all the CNCPPDH members are part-time. It refers to General Observation 2.8 "Full-time members".
6. The critical importance for NHRIs to maintain close cooperation with civil society in order to effectively fulfil their mandate, and calls upon the CNCPPDH to improve its relations with such organizations. It refers to General Observation 1.5 "Cooperation with other human rights institutions".

In the revision of its legislation, the SCA encourages the CNCPPDH to continue its engagement with relevant national authorities in order to have the above-mentioned issues addressed, and to seek the advice and assistance of OHCHR and the regional coordinating committee (Network of African NHRIs).

3.3. Cameroon: National Commission on Human Rights and Freedoms (NCHRF)

Recommendation: The SCA recommends that the NCHRF be accredited with **A status**.

The SCA notes with appreciation:

1. The action undertaken by the NCHRF in pursuing legislative amendments to address concerns regarding compliance with the Paris Principles. It notes that this has led to the
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adoption in March 2010 of the amendments to sections 9 and 15 of the founding Law N°2004/016 of 22 July 2004.

2. The effective operation of the regional offices in extending the NCHRF's work throughout the country. It encourages the NCHRF, through its central and regional offices, to engage proactively in fulfilling both its promotion and protection mandate.

The SCA notes with concern that:

3. The NCHRF continues to face financial constraints that hamper its capacity to fulfil its mandate. The SCA recalls its 2006 recommendation regarding the need for adequacy and reliable funding arrangements and refers the NCHRF to General Observation 2.6 "Adequate Funding" and encourages it to continue to pursue this issue with the relevant government authorities.

The SCA also notes:

4. That the NCHRF's legislation does not provide it with a mandate to encourage ratification and implementation of international human rights standards. The SCA refers to General Observations 1.2 "Human Rights Mandate" and 1.3 "Encouraging ratification or accession to international human rights instruments".
5. The SCA encourages the NCHRF to be more actively involved in monitoring detention centres and in carrying out more regular visits.
6. The SCA recommends that the NCHRF enhance its promotional activities.

The SCA draws the NCHRF's attention to recommendations arising from:

7. The Human Rights Council (A/HRC/11/21) requesting the government to work in close cooperation with the NCHRF to review and implement its national human rights strategy and adopt measures to strengthen the domestic promotion and protection of human rights.
8. The CEDAW (CEDAW/C/CMR/CO/3) regarding the extension of the NCHRF mandate to explicitly cover gender equality.

The SCA encourages the NCHRF to seek advice and assistance from OHCHR and the regional coordinating committee (Network of African NHRIs).

3.4 Slovenia: Human Rights Ombudsman of the Republic of Slovenia (HRORS)

Recommendation: The SCA recommends that the Human Rights Ombudsman of the Republic of Slovenia (HRORS) be re-accredited with **B status**.

The SCA:

1. Acknowledges the effective work of the HRORS as the National Preventative Mechanism (NPM) under the Optional Protocol to the Convention Against Torture, and draws the attention of the Ombudsman to Article 18(4) of the OPCAT which requires that
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institutions designated as NPMs should be developed in accordance with the Paris Principles.

2. Recommends that the mandate of the HRORS be strengthened to include a human rights promotion function and refers to General Observation 1.2 “Human rights mandate”.
3. Refers to General Observation 1.3 “Encouraging ratification or accession to international human rights instruments”, and encourages the entrenchment of this function in the enabling legislation of the Ombudsman to ensure the effective protection of human rights.
4. Received advice from the Ombudsman that recent domestic legislative changes in Slovenia have annulled the provision in the Law of the Human Rights Ombudsman that entitled the Ombudsman to a salary equal to that of the President of the Constitutional Court, and entitled the Deputies to a salary equivalent to Constitutional Court judges. This change may impact the independence and efficiency of the institution and affect the security of tenure of the current Ombudsman and Deputies. The SCA refers to General Observations 2.6 “Adequate Funding” and 2.9 “Guarantee of tenure for members of governing bodies”.

A fundamental aspect in promoting the independence of an NHRI is to ensure the security of tenure of its members. Members must be able to undertake their responsibilities without fear, and without inappropriate interference from the State or other actors. In this regard, clearly establishing the terms and conditions of service of members at the commencement of their appointment is fundamental, as is the requirement that their terms and conditions must not be modified to the detriment of a member during their period of appointment. Furthermore, the terms and conditions of members should be equivalent to those with similar responsibilities in other independent State agencies, as pursuant to the Paris Principles B.2.

In addition, the terms and conditions of staff should also be equivalent to those of similarly independent State agencies and members of the public service undertaking similar work and with similar qualifications and responsibilities.

The SCA encourages the HRORS to seek advice and assistance from OHCHR and the regional coordinating committee (European Coordinating Committee). It also reiterates the need for the HRORS to interact effectively and independently with the UN Human Rights Treaty Bodies, Special Procedures Mandate Holders and Human Rights Council, including the UPR, providing information independently of the Government and later ensuring follow up action to recommendations resulting from that system, pursuant to General Observation 1.4 “Interaction with the International Human Rights System”.

3.5 The Netherlands: Equal Treatment Commission (ETC)

Recommendation: The SCA recommends that the Equal Treatment Commission (ETC) be accredited with **B status**.

The SCA commends the pledge made by The Netherlands before the Human Rights Council regarding the establishment of an NHRI based on the Paris Principles. In this respect, the SCA recognizes the efforts currently undertaken to establish such an institution, by merging the ETC with a proposed broad-mandate institution. The SCA commends the ongoing efforts of the ETC to ensure that the enabling legislation will be in full compliance with the Paris Principles, and encourages it to seek advice and assistance from OHCHR and the regional coordinating committee (European Coordinating Committee) in this endeavour.

The SCA:

- Expresses concern regarding the lack of independence of the ETC from the Ministry of Justice with respect to sections 16.3 and 17.2 of its founding law, which leave the appointment, promotion and dismissal of the Centre's members and staff mainly in the hands of the Ministry of Justice, also the entity in charge of authorizing and allocating the institution's budget. The SCA refers to General Observations 2.2 "Selection and appointment of the governing body" and 2.9 "Guarantee of tenure for members of governing bodies."
- Notes that the ETC's mandate is limited to issues regarding issues of discrimination and equality only and therefore the SCA recommends it be broadened in line with the Paris Principles and General Observation 1.2 "Human rights mandate".
- Recommends that the ETC be vested with the legislative competence to freely address public opinion, raise public awareness on human rights issues and carry out education and training programs.

The SCA encourages the ETC to interact effectively and independently with the International Human Rights System, specifically with UN Human Rights Treaty Bodies, Special Procedures Mandate Holders and Human Rights Council, including the UPR, and provide information independently of the Government and later ensure follow up action to recommendations resulting from that system, pursuant to General Observation 1.4 "Interaction with the International Human Rights System".

The SCA encourages the proposed joint ETC-NHRI to apply for ICC accreditation status following its establishment.

3.6 Belgium: Centre for Equal Opportunities and Opposition to Racism (CEOOR)

Recommendation: The SCA recommends that the CEOOR be accredited with **B status**.

The SCA acknowledges and commends the efforts of the CEOOR to address the recommendation made by the SCA in 1999 regarding the need to broaden its equal opportunities and anti-discrimination mandate. The SCA acknowledges that CEOOR now has the ability to deal with issues of human trafficking. It encourages the Centre to continue its good work towards expanding its mandate in order to promote and protect all human rights and refers to General Observation 1.2 "Human rights mandate".

The SCA further commends the CEOOR on its effective functioning especially in light of its restricted mandate.

The SCA notes the following:

- Although Article 3 of the founding Law of the Centre states that the institution shall perform in complete independence, the CEOOR's legislation also contains the following provisions that may compromise its independence:
 - The governing body of the Centre is not vested with the authority to appoint all staff and to determine the required skills and human rights expertise. The Director, the Deputy Director and the four thematic coordinators of the governing body are appointed by the Federal Government. The SCA refers to General Observation 2.7 "Staff of an NHRI".
 - The CEOOR is required to submit its annual report to the Prime Minister and the Federal Government appoints a government commissioner to control all decisions regarding the Centre's budget. The SCA refers to General Observation 2.10 "Administrative regulation."
 - Contrary to the Paris Principles, the CEOOR is legislatively required to prepare the State's report to the Committee on the Elimination of all forms of Racial Discrimination (CERD). Instead, NHRIs are expected to submit their own reports to the international human rights system (UN Human Rights Treaty Bodies, Special Procedures Mandate Holders and Human Rights Council, including the UPR), providing information independently of the Government and later ensuring follow up action to recommendations resulting from that system. The SCA refers to General Observation 1.4 "Interaction with the International Human Rights System".

- The enabling legislation of the CEOOR is silent on the composition of its governing body and remains unclear as to whether and how the social forces such as civil society, academics, and trade unions are represented. The SCA refers to General Observation 2.1 "Ensuring Pluralism".

- No legislative provisions exist to ensure the transparent and pluralist processes for the nomination, selection and appointment of the governing body, and whether civil society is involved in these processes. The SCA refers to General Observation 2.2 "Selection and appointment of the governing body".

The SCA encourages the CEOOR to seek advice and assistance from OHCHR and the regional coordinating committee (European Coordinating Committee).

3.7 Switzerland: Federal Commission against Racism (FCR)

Recommendation: The SCA recommends the Federal Commission against Racism (FCR) be accredited **C status**.

The SCA expresses appreciation for the work done by the FCR in line with its mandate and welcomes its interaction with the international human rights system.

The SCA expresses concern regarding the lack of independence of the FCR from the government and the resulting compromised ability to exercise its mandate in an independent manner as a result of the following:

- The FCR is an extra-parliamentary commission created by a Decision of the Federal Council. This does not meet the standards of the Paris Principles which provide that a national institution's mandate should be clearly set forth in a constitutional or legislative text. The SCA refers to General Observation 1.1 "Establishment of national institutions".
- The FCR is subordinate to the Federal Department of the Interior (FDI) and submits an annual work programme and a report on its activities to the FDI. The FCR has to seek the approval of the FDI to publish reports, recommendations and proposals.
- The Secretariat of the FCR is attached to the General Secretariat of the FDI. The SCA refers to the Paris Principles regarding the methods of operation of a national human rights institution and to General Observation 2.10 "Administrative Regulation".
- The FCR receives an annual budget from the Government to support its activities. The FCR has fewer than three full time staff positions and does not have its own premises. The FCR holds its meetings at the premises of the Federal Administration and the Secretariat's offices are seated in the premises of the General Secretariat of the FDI. The SCA refers to the Paris Principles which state that a national institution should be able to have its own staff and premises in order to ensure its independence. It further refers to General Observation 2.6 "Adequate Funding" in light of the requirement that the State should, at a minimum, provide adequate funding for its head office.

The SCA notes:

- The enabling legislation is silent on the selection and appointment process of the FCR's members. The Federal Council is in charge of the appointment of the President and other members of the FCR. The SCA refers to General Observation 2.2 "Selection and appointment of the governing body" and emphasizes the importance that the selection and appointment process involves: a transparent process; broad consultation through the selection and appointment process; advertising vacancies broadly; maximizing the number of potential candidates from a wide range of societal groups; and selecting members to serve in their own individual capacity rather than on behalf of the organization they represent.
- There are no written procedures governing dismissal of members of the Institution, nor are there any written procedures to govern the resignation of members. The SCA refers to General Observation 2.9 "Guarantee of tenure for members of governing bodies".
- The mandate of the FCR should be broadened as it currently only focuses on the research and investigation of discrimination-related issues, and possessing only a consultative function, as a specialized body on issues of discrimination. The SCA refers to General Observation 1.2 "Human Rights mandate" and stresses the importance that NHRIs be endowed with a broad mandate to protect and promote all human rights, pursuant to the Paris Principles.

The SCA notes the recommendations of the Universal Periodical Review of Switzerland, to establish an NHRI in line with the Paris Principles.

The SCA encourages the FCR to seek advice and assistance from OHCHR and the regional coordinating committee (European Coordinating Committee).

4 SPECIFIC RECOMMENDATIONS – REVIEWS UNDER ARTICLE 17 OF THE ICC STATUTE

4.1 Nepal: National Human Rights Commission (NHRC)

Recommendation: The SCA informs the NHRC of its intention to recommend the ICC Bureau that the NHRC be accredited with **B status**, and gives the Institution the opportunity to provide, in writing, within one year of such notice, the documentary evidence deemed necessary to establish its continued conformity with the Paris Principles. The NHRC retains its **A status** during this period.

The SCA notes that, pursuant to article 16.3 of the ICC Statute, which provides that “any review of the accreditation classification of a NHRI must be finalized within 18 months”, the SCA is required to make a decision on the accreditation classification of the NHRC at this session, as the review of the NHRC began in March 2008. The recommendations of the SCA made at that time have not been met.

In November 2009, the government registered a new draft NHRC Bill with Parliament. The SCA has a number of concerns regarding the extent to which the Bill provides a strong legal basis for a competent, independent and credible NHRC in accordance with the Paris Principles.

The SCA notes that the NHRC has written to Parliament to set out its reservations with the Bill, particularly in relation to the removal of the terms “independent” and “autonomous” and the absence of provisions to ensure the operational independence of the Commission. The NHRC organized a meeting with Parliamentarians in February 2010 to lobby for a revised Bill, and have participated in other events organized by civil society organizations advocating for appropriate legislation for the NHRC.

The key issues can be summarized as follows:

- There is a lack of guarantees of the NHRC’s independence in the provisions. It is essential that amendments are made to guarantee independence and autonomy, in accordance with the Paris Principles.
 - The definition of “human rights” in the legislation does not currently provide for the broad mandate required by the Paris Principles. Human rights should be defined by reference to all human rights instruments, not only by reference to domestic law.
 - The procedure by which the Commissioners are appointed is dominated by the Executive, without the engagement of a representative and inclusive committee and without the stipulation for a broad consultation of the public and civil society. Furthermore, the procedure does not ensure pluralistic representation amongst the Commissioners.
 - The draft Bill does not provide for sufficient operational independence for the Commission, as required by the Paris Principles. This includes the power to directly recruit its staff, including its Secretary, and the requirement to ensure its staffing reflects the diversity of Nepali society. Furthermore, there is no provision to ensure that the NHRC is provided with adequate funding to fulfill its mandate.
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- The Government is not required to seek the Commission's opinion on the formulation of, or amendments to, legislation regarding human rights and on matters relating to Nepal becoming a party to international or regional human rights treaties. Furthermore, there is no duty on the part of State officials to cooperate with the NHRC.
- There are a number of problematic provisions in terms of the complaint-handling functions of the Commission. For example, there is a new limitation of 6 months from when a violation is committed for a complaint to be filed. This may be inappropriate, particularly in the Nepali context and issues of geography, levels of public awareness and culture of impunity that curtail the prompt access of victims to any remedy or mechanism, including the NHRC.
- The Bill is currently ambiguous concerning the NHRC's jurisdiction in relation to the Nepal Army. It should be clarified that the NHRC is fully able to look into all alleged human rights violations, regardless of which State officials are responsible, including all army officers and personnel.
- The legislation does not establish a process whereby the Commission's report is required to be debated by the Parliament. Consistent with international best practices, it would be preferable if the NHRC had an explicit power to table reports directly in Parliament, rather than through the President, and in so doing to promote action on them.
- The Paris Principles state that an NHRI should cooperate with national and international human rights partners. In this light, the provision requiring "foreign institutions" wanting to conduct human rights programs in Nepal to "seek consent of the Commission" can be viewed as inappropriate. Such a provision should stress cooperation and engagement with all human rights partners, and it would be preferable for the provision requiring such institutions to work in cooperation with the NHRC, and vice-versa.

The NHRC is greatly under-staffed and continues to face a major staffing crisis. Less than 50% of envisaged staff positions are filled, and nearly 90% of these are temporary contracted staff. As set out in the NHRC's October 2009 submission, efforts to regularize these temporary staff as permanent were stayed by the Supreme Court, and in December 2009 the Supreme Court confirmed and nullified this possibility for the NHRC.

There remains a clear division amongst the five Commissioners. Two Commissioners have continued to publicly criticize the workings of the Commission including accusations of corrupt practices and the dysfunctional nature of the institution. These two Commissioners also boycotted the NHRC's Human Rights Day event on December 10, 2009, which is the NHRC's key annual public function, and have not attended Commission meetings for some months. This has meant that important decisions, such as the recent decision to extend the contracts of all temporary staff, have been taken with the involvement of these two Commissioners.

The SCA encourages the NHRC to seek the cooperation of the ICC, OHCHR and the regional coordinating committee (Asia-Pacific Forum of NHRIs) in order to address the above-mentioned matters.

4.2 Qatar : National Human Rights Committee (NHRC)

Recommendation: The SCA recommends that consideration of the review of the NHRC be deferred to the next session while keeping its current accreditation **A Status**.

The SCA acknowledges and commends the efforts of the NHRC to address the recommendations made by the SCA in March 2009 regarding the required revision of its founding law. It notes that on 23 March 2010, the draft law was approved by the Council of Ministers and is proceeding through the legislative process.

The SCA encourages the NHRC to continue to promote the development of legislation in full compliance with the Paris Principles, specifically to address the absence in the draft law on provisions detailing the nomination, selection, appointment and dismissal processes of Committee members. It refers to General Observations 2.1 “Ensuring pluralism” and 2.2 “Selection and appointment of the governing body”. It further encourages the NHRC to seek advice and assistance from OHCHR and the regional coordinating committee (Asia Pacific Forum of NHRIs).

The SCA draws the NHRC’s attention to article 16.3 of the ICC Statute, which provides that “any review of the accreditation classification of a NHRI must be finalized within 18 months”.

4.3 Greece : Greece National Commission for Human Rights (GNCHR)

The SCA was provided with an update from the GNCHR regarding developments to ensuring the financial autonomy over the funds allocated to it, as requested at its November 2009 session.

5 REVIEWS UNDER ARTICLE 16.2 OF THE ICC STATUTE

5.1 Azerbaijan: Human Rights Commissioner (Ombudsman)

The SCA considered:

- The following Concluding Observations of the Committee Against Torture (CAT/C/AZE/CO/3): “The Committee is concerned that the Ombudsman lacks the requisite level of independence to be the national institution responsible for investigating complaints of torture and other human rights violations, as well as to serve as the National Prevention Mechanism under the OPCAT. The State party should take effective measures to ensure that the Ombudsman’s Office is in practice a functioning, independent body, in compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles)”.
- The circumstances surrounding the reappointment process of the Ombudsman.

The SCA decided to undertake a Special Review of the accreditation status of the Ombudsman at its next session.

5.2 Great Britain: Equality and Human Rights Commission (EHRC)

The SCA considered the Conclusions and Recommendations of the 15th Report of Session 2009-10 of the House of Lords/ House of Commons Joint Committee on Human Rights “Enhancing Parliament’s role in relation to human rights judgements” (HL paper 85. 26 March 2010), concerning the performance of the EHRC, the reappointment of its Chair, and the pluralism of its membership.

The SCA decided to undertake a Special Review of the accreditation status of the EHRC at its next session.

5.3 Honduras: Comisionado Nacional de los Derechos Humanos (CNDH)

The SCA considered the Report of the United Nations High Commissioner for Human Rights on the violations of human rights in Honduras since the coup d’état on 28 June 2009 to the Human Rights Council (A/HRC/13/66) and the expected role of the CNDH in promoting and ensuring respect for human rights, democratic principles and strengthening the rule of law in all circumstances without exception.

The SCA decided to undertake a Special Review of the accreditation status of the CNDH at its next session.

5.4 Republic of Korea: National Human Rights Commission (NHRCK)

The SCA considered the information received from the President of the NHRCK. The SCA commends the past engagement of the NHRCK both regionally and internationally and encourages the NHRCK to continue to do so.

The SCA recalls its recommendations made in November 2008 and encourages the NHRCK to continue to implement them.

5.5 Niger: Commission Nationale des Droits de l’Homme et des Libertés Fondamentales (CNDHLF)

The SCA noted the dissolution of the CNDHLF and the unanimous resolution adopted by the ICC at its 23rd Session (attached as Annex 6).

The SCA recommends that the reference to the CNDHLF as a status A institution be removed or noted as to its dissolution.

Annex I

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

STATUTE

Art 1.1	<p>SECTION 1: DEFINITIONS AND INTERPRETATION</p> <p>In this Statute</p> <p>Former Rules of Procedure means the Rules of Procedure of “The International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights” adopted on 15 April 2000 and as amended on 13 April 2002, and on 14 April 2008 which are now merged into this Statute;</p> <p>ICC means the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights existing under the former Rules of Procedure, referred to in the United Nations Commission on Human Rights resolution 2005/74 and the United Nations Human Rights Council resolution 5/1, which is now given independent corporate personality by this Statute;</p> <p>ICC Bureau means the committee of management established under Article 43 of this Statute;</p> <p>Days: In this statute, a reference to days means calendar days, not working days.</p> <p>NHRI means a National Human Rights Institution;</p> <p>NIU means the National Institutions Unit of the Office of the United Nations High Commissioner for Human Rights;</p> <p>Observer means an institution or person granted permission to participate in ICC meetings or other open meetings or workshops without voting rights and without the right to speak unless invited to do so by the Chairperson of the meeting or workshop.</p> <p>OHCHR means the Office of the United Nations High Commissioner for Human Rights;</p> <p>Paris Principles means the Principles Relating to the Status of National Institutions, adopted by the United Nations Commission on Human Rights in resolution 1992/54 of 3 March 1992 and endorsed by the United Nations General Assembly in resolution 48/134 of 20 December 1993;</p> <p>Rules of Procedure of the ICC Sub-Committee on Accreditation mean the Rules of Procedure for the ICC Sub-Committee on Accreditation adopted by the members of the International Coordinating Committee constituted under the former Rules of Procedure at its 15th session, held on 14 September 2004 at Seoul, Republic of Korea, as amended at the 20th session, held on 14 April 2008 at Geneva, Switzerland, and continued in existence under the transitional provisions of this Statute;</p> <p>Regional Coordinating Committee means the body established by NHRIs in each of the regional groupings referred to in Section 7 of this Statute to act as their</p>
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	<p>coordinating secretariats, namely:</p> <ul style="list-style-type: none"> ▪ Asia Pacific Forum of National Human Rights Institutions; ▪ European Coordinating Committee of National Human Rights Institutions; ▪ Network of African National Human Rights Institutions; and ▪ Network of National Human Rights Institutions of the Americas; <p>Secretary means the individual elected as Secretary under Article 34 who acts as the Deputy to the Chairperson to carry out the role and functions of the Chairperson in her or his absence, including the functions referred to in Article 49;</p> <p>Sub-Committee on Accreditation means the sub-committee established under the former Rules of Procedure and referred to as the Accreditation Subcommittee of the International Coordinating Committee of National Institutions in United Nations Commission on Human Rights resolution 2005/74 as the authority to accredit NHRIs, under the auspices of the OHCHR, and whose mandate is given to it under and in accordance with the Rules of Procedure for the ICC Sub-Committee on Accreditation;</p> <p>Voting member means a NHRI which is a member of the ICC and is accredited with an ‘A’ status; and non-voting member means a NHRI which is a member of the ICC and is accredited with a ‘B’ status;</p> <p>‘Writing’ or ‘Written’ includes any hand-written, typed or printed communication, including telex, cable, electronic mail and facsimile transmissions.</p>
Art 1.2	<p>References to the ‘ICC’ in the Rules of Procedure for the ICC Sub-Committee on Accreditation shall be read as references to the ICC Bureau established under this Statute, and references to the ‘ICC Rules of Procedure’ shall be read as references to the former Rules of Procedure, and to the corresponding rules in this Statute.</p>
Art 2	<p>SECTION 2: NAME, LOGO AND REGISTERED OFFICE</p> <p>A non-profit association is hereby created by the National Human Rights Institutions (NHRIs) subscribing to this present Statute, according to Articles 60 and following of the Swiss Civil Code as an international association possessing legal personality independent of its members. The name of the association is the Association International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, in this Statute referred to as the ICC. The duration of the ICC is unlimited.</p> <p>The ICC created by this Statute gives independent corporate personality to the loose arrangement of NHRIs hitherto existing under the former Rules of Procedure.</p>
Art 3	<p>The official logo of the ICC, in each of the working languages, is the following image:</p> <div style="display: flex; align-items: center;">  <div style="margin-left: 20px;"> <p>INTERNATIONAL COORDINATING COMMITTEE OF NATIONAL INSTITUTIONS FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS (ICC)</p> </div> </div>

	 <p>COMITÉ INTERNATIONAL DE COORDINATION DES INSTITUTIONS NATIONALES POUR LA PROMOTION ET LA PROTECTION DES DROITS DE L'HOMME (CIC)</p>  <p>COMITÉ INTERNACIONAL DE COORDINACIÓN DE LAS INSTITUCIONES NACIONALES PARA LA PROMOCIÓN Y LA PROTECCIÓN DE LOS DERECHOS HUMANOS (CIC)</p>
Art 4	The registered office of the ICC is 42 avenue Krieg, 1208 Geneva, Switzerland
Art 5	<p>SECTION 3: PURPOSE</p> <p>Objects</p> <p>The ICC is an international association of NHRIs which promotes and strengthens NHRIs to be in accordance with the Paris Principles and provides leadership in the promotion and protection of human rights.</p>
Art 6	General Meetings of the ICC, meetings of the ICC Bureau and of the Sub-Committee on Accreditation, as well as International Conferences of the ICC shall be held under the auspices of, and in cooperation with, OHCHR.
Art 7	<p>Functions</p> <p>The functions of the ICC are:</p> <ol style="list-style-type: none"> 1. To coordinate at an international level the activities of NHRIs established in conformity with the Paris Principles, including such activities as: <ul style="list-style-type: none"> ▪ Interaction and cooperation with the United Nations, including the OHCHR, the Human Rights Council, its mechanisms, United Nations human rights treaty bodies, as well as with other international organisations; ▪ Collaboration and coordination amongst NHRIs and the regional groups and Regional Coordinating Committees; ▪ Communication amongst members, and with stakeholders including, where appropriate, the general public; ▪ Development of knowledge; ▪ Management of knowledge; ▪ Development of guidelines, policies, statements; ▪ Implementation of initiatives; ▪ Organisation of conferences. 2. To promote the establishment and strengthening of NHRIs in conformity with the Paris Principles, including such activities as: <ul style="list-style-type: none"> ▪ Accreditation of new members; ▪ Periodic renewal of accreditation;

	<ul style="list-style-type: none"> ▪ Special review of accreditation; ▪ Assistance of NHRIs under threat; ▪ Encouraging the provision of technical assistance; ▪ Fostering and promoting education and training opportunities to develop and reinforce the capacities of NHRIs. <p>3. To undertake such other functions as are referred to it by its voting members.</p> <p>Principles:</p> <p>In fulfilling these functions, the ICC will work in ways that emphasize the following principles:</p> <ul style="list-style-type: none"> ▪ Fair, transparent, and credible accreditation processes; ▪ Timely information and guidance to NHRIs on engagement with the Human Rights Council, its mechanisms, and United Nations human rights treaty bodies; ▪ The dissemination of information and directives concerning the Human Rights Council, its mechanisms, and United Nations human rights treaty bodies to NHRIs; ▪ Mandated representation of NHRIs; ▪ Strong relationships with the OHCHR and the Regional Coordinating Committees that reflect the complementarity of roles; ▪ Flexibility, transparency and active participation in all processes; ▪ Inclusive decision-making processes based on consensus to the greatest extent possible; ▪ The maintenance of its independence and financial autonomy.
<p>Art 8</p>	<p>International Conference</p> <p>The ICC shall hold a biennial International Conference in accordance with the Rules of Procedure of International Conferences of National Institutions for the Promotion and Protection of Human Rights adopted by NHRIs at their ICC meeting held in Geneva, Switzerland on 17 April 2002.</p>
<p>Art 9</p>	<p>SECTION 4: LIAISON WITH OTHER HUMAN RIGHTS INSTITUTIONS AND NGOs</p> <p>The ICC may liaise with other human rights institutions including the International Ombudsman Institute and non-governmental organizations. The ICC Bureau may decide to grant such organizations observer status at any meetings or workshops of the ICC or the ICC Bureau.</p>
	<p>SECTION 5: PARIS PRINCIPLES ACCREDITATION</p> <p>[Note: Pursuant to Human Rights Council resolution 5/1, VII Rules of Procedure, rule 7(b), participation of NHRIs in the work of the Human Rights Council is based on arrangements and practices agreed upon by the Human Rights Commission including resolution 2005/74 of 20 April 2005. Resolution 2005/74, paragraph 11(a), permitted NHRIs that are accredited by the Sub-Committee on Accreditation to</p>

	exercise participation rights in the Human Rights Commission and subsidiary bodies of the Commission.]
Art 10	<p>Application for Accreditation Process</p> <p>Any NHRI seeking accreditation under the Paris Principles shall apply to the Chairperson of the ICC. Through the ICC Secretariat, that NHRI shall supply the following in support of its application:</p> <ul style="list-style-type: none"> ▪ a copy of the legislation or other instrument by which it is established and empowered in its official or published format; ▪ an outline of its organizational structure including staff complement and annual budget; ▪ a copy of its most recent annual report or equivalent document in its official or published format; ▪ 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 Bureau may determine the form in which this statement is to be provided. <p>The application shall be decided pursuant to Articles 11 and 12 of this Statute.</p>
Art 11.1	All applications for accreditation under the Paris Principles, shall be decided under the auspices of, and in cooperation with, OHCHR by the ICC Bureau after considering a report from the Sub-Committee on Accreditation on the basis of written evidence submitted.
Art 11.2	In coming to a decision, the ICC Bureau and the Sub-Committee shall adopt processes that facilitate dialogue and exchange of information between it and the applicant NHRI as deemed necessary to come to a fair and just decision.
Art 12	<p>Where the Sub-Committee on Accreditation comes to an accreditation recommendation, it shall forward that recommendation to the ICC Bureau whose decision is final subject to the following process:</p> <ul style="list-style-type: none"> ▪ The recommendation of the Sub-Committee shall first be forwarded to the applicant; ▪ An applicant can challenge a recommendation by submitting a written challenge to the ICC Chairperson, through the ICC Secretariat, within twenty eight (28) days of receipt. ▪ Thereafter the recommendation will be forwarded to the members of the ICC Bureau for decision. If a challenge has been received from the applicant, the challenge together with all relevant material received in connection with both the application and the challenge will also be forwarded to the members of the ICC Bureau; ▪ Any member of the ICC Bureau who disagrees with the recommendation shall, within twenty (20) days of its receipt, notify the Chair of the Sub-Committee and the ICC Secretariat. The ICC Secretariat will promptly notify all ICC Bureau members of the objection raised and will provide all necessary information to

	<p>clarify that objection. If within twenty (20) days of receipt of this information at least four members of the ICC Bureau coming from not less than two regional groups notify the ICC Secretariat that they hold a similar objection, the recommendation shall be referred to the next ICC Bureau meeting for decision;</p> <ul style="list-style-type: none"> ▪ If at least four members coming from two or more regional groups do not raise objection to the recommendation within twenty (20) days of its receipt, the recommendation shall be deemed to be approved by the ICC Bureau; ▪ The decision of the ICC Bureau on accreditation is final.
Art 13	Should the ICC Bureau decide to decline an application for accreditation of any NHRI by reason of its failure to comply with the Paris Principles, the ICC Bureau or its delegate may consult further with that institution concerning measures to address its compliance issues.
Art 14	Any NHRI whose application for accreditation has been declined may reapply for accreditation, according to the guidelines under Article 10, at any time. Such an application may be considered at the next meeting of the Sub Committee on Accreditation.
Art 15	<p>Periodic Re-accreditation</p> <p>All NHRIs that hold an ‘A’ status are subject to re-accreditation on a five year cyclical basis. Article 10 applies to NHRIs undergoing re-accreditation. In particular reference to an application for accreditation means both the initial application and the application for re-accreditation.</p>
Art 16.1	<p>Review of Accreditation Process</p> <p>Where the circumstances of any NHRI change in any way which may affect its compliance with the Paris Principles, that NHRI shall notify the Chairperson of those changes and the Chairperson shall place the matter before the Sub-Committee on Accreditation for review of that NHRI’s accreditation status.</p>
Art 16.2	Where, in the opinion of the Chairperson of the ICC or of any member of the Sub-Committee on Accreditation, it appears that the circumstances of any NHRI that has been accredited with an ‘A’ status under the former Rules of Procedure 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 NHRI’s accreditation status.
Art 16.3	Any review of the accreditation classification of a NHRI must be finalized within eighteen (18) months.
Art 17	On any review the Chairperson and Sub-Committee on Accreditation shall have all the powers and responsibilities as in an application under Article 10.
Art 18	<p>Alteration of Accreditation Classification</p> <p>Any decision that would serve to remove accredited ‘A’ status from an applicant can only be taken after the applicant is informed of this intention and is given the opportunity to provide in writing, within one (1) year of receipt of such notice, the</p>

	written evidence deemed necessary to establish its continued conformity to the Paris Principles.
Art 19	An accreditation classification held by a NHRI may be suspended if the NHRI fails to submit its application for re-accreditation or fails to do so within the prescribed time without justification.
Art 20	An accreditation classification may lapse if a NHRI fails to submit an application for re-accreditation within one (1) year of being suspended for failure to reapply, or if a NHRI under review under Article 16 of this Statute fails to provide sufficient documentation, within eighteen (18) months of being placed under review, to satisfy the body determining membership under this Statute that it remains in conformity with the Paris Principles.
Art 21	NHRIs whose accreditation has been suspended remain suspended until the body determining their compliance with the Paris Principles under this Statute comes to a determination of their accreditation status or until their accreditation lapses.
Art 22	NHRIs whose accreditation status has lapsed or been revoked may regain accreditation only by re-applying for accreditation as provided for in Article 10 of this Statute.
Art 23	In the event that accreditation lapses or is revoked or suspended, all rights and privileges conferred on that NHRI through accreditation immediately cease. In the event that a NHRI is under review, it shall retain the accreditation 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.
Art 24.1	<p>SECTION 6: MEMBERS</p> <p>Eligibility</p> <p>Only NHRIs which comply fully with the Paris Principles, being those which have been accredited with an 'A' status in accordance with the former Rules of Procedure or pursuant to the procedure established under this Statute shall be eligible to be voting members of the ICC.</p>
Art 24.2	NHRIs that are only partially compliant with the Paris Principles, being those which have been accredited with a 'B' status in accordance with the former Rules of Procedure or pursuant to the procedure established under this Statute shall be eligible to become a non-voting member.
Art 25	Any NHRIs wishing to become a member of the ICC shall apply in writing to the Chairperson of the ICC giving: in the case of an application for voting membership, particulars of the date on which it was accredited with A status; and, in the case of an application for non-voting membership, particulars of the date on which it was accredited with B status. In either case, the applicant must indicate their agreement to be bound by this Statute as amended from time to time (including as to the payment of the applicable annual membership subscription). The application shall be considered and decided by the ICC Bureau.

Art 26	A NHRI shall cease to be a member of the ICC upon written notice by that NHRI of resignation given to the Chairperson of the ICC, but without prejudice to the obligation of the NHRI to discharge outstanding fiscal obligations due to the ICC at the date of resignation.
Art 27	Membership may be revoked by resolution of the ICC Bureau if the body determining accreditation status under this Statute determines that a member no longer meets the membership eligibility requirements in Article 24.
Art 28	Membership may be cancelled by resolution of the ICC Bureau if that member has failed for six (6) months or more to pay an annual subscription that is due and owing.
Art 29.1	A NHRI whose membership has been revoked, or cancelled for non-payment of an annual subscription, may regain membership by reapplying for membership under Article 25 of this Statute.
Art 29.2	Where membership has been cancelled for non-payment of a subscription, re-admission to membership shall be subject to payment of the outstanding subscription or so much thereof as the ICC Bureau shall determine.
Art 30	<p>Independence of Members</p> <p>Notwithstanding anything in this Statute, the independence, authority and national status of members, and their powers, duties and functions under their own legislative mandates, and their participation in the different international fora on human rights shall in no way be affected by the creation of the ICC or its functioning.</p>
Art 31.1	<p>SECTION 7: REGIONAL GROUPING OF MEMBERS</p> <p>For the purpose of ensuring a fair balance of regional representation on the ICC the following regional groups are established:</p> <ul style="list-style-type: none"> ▪ Africa ▪ The Americas ▪ Asia-Pacific ▪ Europe
Art 31.2	The members within any regional group may establish such sub-regional groupings as they wish.
Art 31.3	The members of regional groups may establish their own procedures concerning meetings and activities.
Art 31.4	Each regional group is to appoint four (4) members accredited with an 'A' status which shall each have a representative on the ICC Bureau.
Art 32	<p>SECTION 8: GENERAL MEETINGS OF MEMBERS</p> <p>The General Meeting is composed by the ICC members and constitutes the supreme</p>

	power of the association.
Art 33	The duties of the General Meeting include control of the activities of the ICC, review and control of the activities of the ICC Bureau, ratification of the program of ICC activities, the amendment of this Statute, consideration of funding issues and the fixing of annual membership subscriptions to be paid by members accredited with an 'A' status provided however that decisions of the ICC Bureau on accreditation determinations shall not be subject to review or control by a General Meeting.
Art 34	The General Meeting ratifies the appointment of the members of the ICC Bureau and elects the Chairperson and the Secretary. The members of the ICC Bureau must be individuals representing the members of the ICC accredited with an "A" status which have been appointed by their regional groups under article 31.
Art 35	If required under Swiss Law, the General Meeting must elect an auditor who shall not be a member of the ICC.
Art 36	The General Meeting meets at least once a year in conjunction with a meeting of the Human Rights Council upon written notice given by the ICC Bureau to the members at least six (6) weeks in advance and at such other times required according to the law including when a request is demanded by one fifth or more of the members.
Art 37	The agenda of the meeting shall be submitted to the members with the written notice of meeting.
Art 38	SECTION 9: RIGHT TO VOTE AND DECISIONS At General Meetings only members accredited with an 'A' status shall be entitled to vote. A member that has been accredited with a 'B' status has the right to participate and speak in General Meetings (and all other open meetings and workshops of the ICC). A NHRI that is not accredited with either an 'A' or 'B' status may, with the consent of the particular meeting or workshop, attend as an observer. The Chairperson, after consultation with ICC members, may invite NHRIs who are not members of the ICC and any other person or institution to participate in the work of the ICC as an observer.
Art 39	At General Meetings only one (1) NHRI per Member State of the United Nations shall be eligible to be a voting member. Where more than one (1) institution in a State qualifies for membership the State shall have one (1) speaking right, one (1) voting right, and if elected, one (1) ICC Bureau member. The choice of an institution to represent the NHRIs of a particular State shall be for the relevant institutions to determine.
Art 40	Decisions of the General Meeting are passed by the majority of members present or duly represented. The General Meeting will only deal with matters that are summarized in the Agenda. If necessary, or on the request of more than half of the members present at a General Meeting, the Chairperson can call an Extraordinary General Meeting.
Art 41	A quorum of at least one half of the total number of members is necessary.

Art 42	English, French, and Spanish shall be the working languages of the ICC. As a result, documents from the ICC should be available in these languages.
Art 43	<p>SECTION 10: ICC BUREAU</p> <p>The ICC is managed by a committee entitled the ICC Bureau which shall comprise sixteen (16) individuals, including the Chairperson and the Secretary.</p>
Art 44	In the event that a representative of a member of a regional group for any reason is no longer able to represent that member, or if the member ceases to hold an 'A' status accreditation, or the member's appointment under Article 31.4 is withdrawn, the representative shall cease to be a member of the ICC Bureau and the Regional Coordinating Committee shall thereupon appoint another representative who shall act as a casual member of the ICC Bureau until the next General Meeting.
Art 45	The Chairperson and the Secretary shall be elected on a geographically rotational basis by the General Meeting for a non-renewable term of three (3) years. The order of rotation shall be: the Americas, the Asia Pacific region, Africa, and Europe.
Art 46	<p>Powers of the ICC Bureau</p> <p>The ICC Bureau is empowered to act generally in the name of the ICC and to carry out the purpose and functions of the ICC. Without limiting the generality of the powers of management the ICC Bureau is empowered to:</p> <ul style="list-style-type: none"> ▪ decide applications for accreditation after considering a recommendation from the Sub-Committee on Accreditation; ▪ decide applications for membership of the ICC; ▪ summon General Meetings of the ICC; ▪ collaborate and work with the OHCHR and its NIU, and in particular to work with the NIU in connection with the ICC accreditation process, annual meetings of the ICC, meetings of the ICC Bureau and international conferences of NHRIs. In addition, the NIU will facilitate and coordinate the participation of NHRIs in the Human Rights Council, its mechanisms, and the United Nations human rights treaty bodies ; ▪ use and accept the services of the NIU as the Secretariat for the ICC, the ICC Bureau and its Sub-Committee on Accreditation; ▪ appoint from the members of the ICC Bureau a person to be the treasurer of the ICC; ▪ acquire, lease, dispose of or otherwise deal in property of any kind; ▪ open bank accounts, appoint signatories thereto and define the authority of the signatories; ▪ spend money and do all things it considers desirable to promote the purposes of the ICC; ▪ delegate any function to a nominated person, standing committee or subcommittee of persons or members; ▪ co-ordinate and arrange conferences, meetings, standing committees and sub-

	<p>committees, and other activities;</p> <ul style="list-style-type: none"> ▪ engage, dismiss or suspend employees, agents and contractors; ▪ enter into contracts ; ▪ engage professional assistance for the preparation of annual and other financial statements, to obtain legal advice, and for any other purpose; ▪ prepare and disseminate information notes, bulletins and papers of any kind to members, and to promote generally information about human rights issues and activities of the Human Rights Council, its mechanisms, the United Nations human rights treaty bodies, and of the ICC in which members could have an interest; ▪ receive financial grants and donations, and gifts of any kind; ▪ adopt, amend or revoke rules of procedure in relation to the working methods of the ICC Bureau and its sub-committees to regulate or clarify any matter contemplated by this Statute. Every decision to adopt, amend or revoke a rule shall as soon as is practicable be circulated to all members of the ICC and posted on the nhri.net website.
<p>Art 47</p>	<p>Membership Subscription</p> <p>The ICC Bureau shall as and when it considers appropriate recommend to a General Meeting that an annual membership subscription be set by the General Meeting. Once set the Bureau will ensure procedures are in place to collect membership subscriptions. The ICC Bureau in its discretion may waive in whole or in part the annual subscription for a member if satisfied that the member is unable to pay the full amount due.</p>
<p>Art 48</p>	<p>Meetings of the ICC Bureau</p> <p>A meeting of the ICC Bureau shall be held in conjunction with each General Meeting of the ICC and at least two (2) times each year. Otherwise, the ICC Bureau shall meet at such times and places as it or the Chairperson shall decide. Written notice summoning a meeting shall be given at least four (4) weeks in advance unless the ICC Bureau agrees to a shorter period for that meeting. The agenda of the meeting shall be submitted to the members with the written notice of meeting.</p>
<p>Art 49</p>	<p>The Chairperson and Secretary</p> <p>The Chairperson, or in his or her absence the Secretary, shall direct the work of the General Meeting and the ICC Bureau. Until otherwise decided by a General Meeting, she or he shall represent the ICC in accordance with developed practices and authorities followed by the Chairperson acting under the former Rules of Procedure.</p> <p>In particular, the Chairperson may speak at the Human Rights Council, its mechanisms, United Nations human rights treaty bodies and, when invited, at other international organisations:</p> <ul style="list-style-type: none"> ▪ on behalf of the ICC on topics authorised by a General Meeting or the ICC Bureau;

	<ul style="list-style-type: none"> ▪ on behalf of individual NHRIs when authorised by them; ▪ on thematic human rights issues to promote policy decided by a General Meeting, a biennial conference or by the ICC Bureau; and ▪ generally to advance the objects of the ICC.
Art 50.1	<p>Conduct of ICC Bureau Business</p> <p>English, French, and Spanish shall be the working languages of the ICC Bureau. As a result, documents from the ICC should be available in these languages.</p>
Art 50.2	A majority of the members of the ICC Bureau shall constitute a quorum.
Art 50.3	An agenda for each meeting shall be drawn up by the Chairperson in consultation with the ICC Bureau members. Agenda items may be added at the meeting if approved by a majority of the members present.
Art 50.4	Members of the ICC Bureau may be accompanied at meetings by advisers, including, by representatives from the relevant Regional Coordinating Committee. Such persons attend in the capacity of advisers to their members and observers to the meeting, and may participate in discussions at the call and invitation of the Chair.
Art 50.5	Each member of the ICC Bureau shall have one (1) vote. Where possible, decisions of the ICC Bureau 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.
Art 50.6	The ICC Bureau may invite NHRIs whether or not members of the ICC and any other person or institution to participate in the work of the ICC or the ICC Bureau as an observer.
Art 50.7	Notwithstanding the forgoing provisions of this Article 50, the ICC Bureau may decide any matter in writing without the need to formally summon a meeting provided that a majority of the members of the ICC Bureau concur with the decision.
Art 50.8	The ICC Bureau, through the Chairperson or in her or his absence through the Secretary, shall present to General Meetings reports on activities carried out by the ICC, the ICC Bureau and its officers since the preceding General Meeting.
Art 51	<p>Further Procedure</p> <p>Should any question concerning the procedure of the ICC Bureau arise which is not provided for by these rules the ICC Bureau may adopt such procedure as it thinks fit.</p>
Art 52	<p>SECTION 11: FINANCIAL ADMINISTRATION</p> <p>Accounting Year</p> <p>The financial year ends on 31 December of each year.</p>
	SECTION 12: ASSETS OF THE ICC

Art 53	<p>The assets of the ICC comprise and include:</p> <ul style="list-style-type: none"> ▪ grants obtained from international and national public and semi-public organizations; ▪ donations; ▪ subscriptions; ▪ funds entrusted to it by other organizations, associations, businesses or institutions; and ▪ income and property of any kind received from whatever source.
Art 54	<p>The assets of the ICC must be applied solely towards promoting the purposes of the ICC as set out in Section 3 in line with the Principles as set out in Article 7.</p>
Art 55	<p>SECTION 13: DISSOLUTION AND LIQUIDATION</p> <p>Dissolution</p> <p>The ICC may be dissolved by resolution of the ICC in a General Meeting. A General Meeting called for this purpose shall be convened specially. At least one half of the members must be present. If this proportion is not present the General Meeting must be reconvened after an interval of at least two (2) weeks. It can then validly deliberate with whatever numbers of members are present. In any case the dissolution can only be approved by a majority of three quarters of the members present.</p>
Art 56	<p>Liquidation</p> <p>The winding up of the ICC and the liquidation of its assets shall be carried out by one (1) or more liquidators appointed by the General Meeting. The General Meeting must authorize the liquidator or liquidators to distribute the net assets to another association or public organization having similar purposes to the ICC. No part of the net assets available for distribution shall be paid to any member of the ICC.</p>
Art 57	<p>SECTION 14: RULES OF PROCEDURE</p> <p>The General Meeting may adopt, amend or revoke rules of procedure in relation to the working methods of the ICC, including General Meetings and international conferences, to regulate or clarify any matter contemplated by this Statute.</p>
Art 58	<p>SECTION 15: AMENDMENT OF STATUTE</p> <p>This Statute may be amended only by a General Meeting of the ICC.</p>
Art 59	<p>SECTION 16: TRANSITIONAL PROVISION</p> <p>The Sub-Committee on Accreditation and the Rules of Procedure for the ICC Sub-Committee on Accreditation are by this Statute continued in existence, and shall remain in existence until amended or revoked by the ICC Bureau. The Sub-Committee on Accreditation is hereby constituted a sub-committee of the ICC Bureau. The Rules of Procedure for the ICC Sub-Committee on Accreditation are incorporated into this Statute as Annex I</p>

EXECUTED BY:

Ms. Jennifer Lynch, Q.C.

30 July 2008

Amended at a General Meeting held at Nairobi, 21st October 2008

Amended at a General Meeting held at Geneva, 24th March 2009

ANNEX TO THE ICC STATUTE

RULES OF PROCEDURE FOR THE ICC SUB-COMMITTEE ON ACCREDITATION*

1. Mandate

In accordance with the Statute of the Association International Coordination Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) (Article 1.1), the Sub-Committee on Accreditation has the mandate to review and analyse accreditation applications forwarded by the ICC Chairperson and to make recommendations to the ICC 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 NHRI accredited 'Status A' for each of the four (4) regional groups as established by the ICC Statute (Section 7), namely Africa, Americas, Asia-Pacific, and Europe.

2.2. Members are appointed by regional groups 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 NHRI in that region.

2.4 The Office of the United Nations High Commissioner for Human Rights (OHCHR) shall be a permanent observer to the Committee and in its capacity as Secretariat of the ICC, support the Sub-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 group representative to the Sub-Committee on Accreditation shall facilitate the application process for NHRIs in the region.

3.2. The regional grouping representative shall supply NHRIs 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 Statute (Section 5), any NHRI 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. Subject to rule 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 deadline 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. Any civil society organization wishing to provide relevant information pertaining to any accreditation matter before the Sub-Committee shall provide such information in writing to the ICC Secretariat at least four (4) months prior to the meeting of the Sub-Committee.

3.7. The ICC Chairperson, with support from the ICC Secretariat, will ensure that copies of the applications and supporting documentation are provided to each member of the Sub-Committee on Accreditation.

3.8. The ICC Chairperson, with support from the ICC Secretariat, 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 General Meeting of the ICC in order to consider any accreditation matter under Section 5 of the Statute.

4.2. The Chairperson of the Sub-Committee on Accreditation may invite any person or institution to participate in the work of the Sub-Committee as an observer.

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

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 Bureau for determination and guidance. An ultimate decision as to accreditation can only be taken once the ICC Bureau provides that decision or guidance.

4.5. The Sub-Committee may, pursuant to Article 11.2 of the ICC Statute, 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 Article 11.2, 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 Bureau 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 Statute, the different classifications for accreditation used by the Sub-Committee are:

A: Voting Member - Fully in compliance with each of the Paris Principles;

B: Non-Voting Member - Not fully in compliance with each of the Paris Principles or insufficient information provided to make a determination;

C: No Status – Not in compliance with the Paris Principles.

6. Report and Recommendations

6.1 Pursuant to Article 12 of the ICC Statute, where the Sub-Committee on Accreditation comes to an accreditation recommendation, it shall forward that recommendation to the ICC Bureau whose final decision is subject to the following process:

- (i) The recommendation of the Sub-Committee shall first be forwarded to the applicant;
- (ii) An applicant can challenge a recommendation by submitting a written challenge to the ICC Chairperson, through the ICC Secretariat, within twenty eight (28) days of receipt;
- (iii) Thereafter the recommendation will be forwarded to the members of the ICC Bureau for decision. If a challenge has been received from the applicant, the challenge together with all relevant material received in connection with both the application and the challenge will also be forwarded to the members of the ICC Bureau;
- (iv) Any member of the ICC Bureau who disagrees with the recommendation shall, within twenty (20) days of its receipt, notify the Chair of the Sub-Committee and the ICC Secretariat. The ICC Secretariat will promptly notify all ICC Bureau members of the objection raised and will provide all necessary information to clarify that objection. If within twenty (20) days of receipt of this information at least four members of the ICC Bureau coming from not less than two regional groups notify the ICC Secretariat that they hold a similar objection, the recommendation shall be referred to the next ICC Bureau meeting for decision;
- (v) If at least four members of the ICC Bureau coming from not less than two regional groups do not raise objection to the recommendation within twenty (20) days of its receipt, the recommendation shall be deemed to be approved by the ICC Bureau;
- (vi) The decision of the ICC Bureau on accreditation is final.

6.2 General Observations are to be developed by the Sub-Committee and approved by the ICC Bureau.

6.3 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. Amended by the members of the ICC at its 20th session, held on 15 April 2008, Geneva, Switzerland.*

Annex II

Principles relating to the status of national institutions

(A) Competence and responsibilities*

1. A national institution shall be vested with competence to promote and protect human rights.
 2. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.
 3. A national institution shall, inter alia, have the following responsibilities:
 - (a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicize them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:
 - (i) Any legislative or administrative provisions, as well as provisions relating to judicial organizations, intended to preserve and extend the protection of human rights; in that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights; it shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;
 - (ii) Any situation of violation of human rights which it decides to take up;
 - (iii) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;
 - (iv) Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government;
 - (b) To promote and ensure the harmonization of national legislation regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;
 - (c) To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;
 - (d) To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations and, where necessary, to express an opinion on the subject, with due respect for their independence;
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(e) To cooperate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the promotion and protection of human rights;

(f) To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;

(g) To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.

(B) Composition and guarantees of independence and pluralism

1. The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:

(a) Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;

(b) Trends in philosophical or religious thought;

(c) Universities and qualified experts;

(d) Parliament;

(e) Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).

2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.

3. In order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.

(C) Methods of operation

Within the framework of its operation, the national institution shall:

(a) Freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner;

(b) Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;

- (c) Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;
- (d) Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly convened;
- (e) Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions;
- (f) Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular ombudsmen, mediators and similar institutions);
- (g) In view of the fundamental role played by the non-governmental organizations in expanding the work of the national institutions, develop relations with the non-governmental organizations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.

Additional principles concerning the status of commissions with quasi-judicial competence

A national institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organizations, associations of trade unions or any other representative organizations. In such circumstances, and without prejudice to the principles stated above concerning the other powers of the commissions, the functions entrusted to them may be based on the following principles:

- (a) Seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality;
- (b) Informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them;
- (c) Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;
- (d) Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations and administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.

** Paris Principles defined at the first International Workshop on National Institutions for the Promotion and Protection of Human Rights in Paris 7-9 October 1991, adopted by Human Rights Commission Resolution 1992/54, 1992 and General Assembly Resolution 48/134, 1993.*

Annex III

ICC SUB-COMMITTEE ON ACCREDITATION

GENERAL OBSERVATIONS

1. Competence and responsibilities

- 1.1 Establishment of national institutions:** An NHRI must be established in a constitutional or legal text. Creation by an instrument of the Executive is not adequate to ensure permanency and independence.
- 1.2 Human rights mandate:** All NHRIs should be mandated with specific functions to both protect and promote human rights, such as those listed in the Paris Principles.
- 1.3 Encouraging ratification or accession to international human rights instruments:** The Sub-Committee interprets that the function of encouraging ratification or accession to international human rights instruments, set out in the Paris Principles, is a key function of a National Institution. The Sub-Committee therefore encourages the entrenchment of this function in the enabling legislation of the National Institution to ensure the best protection of human rights within that country.
- 1.4 Interaction with the International Human Rights System:** The Sub-Committee would like to highlight the importance for NHRIs to engage with the international human rights system, in particular the Human Rights Council and its mechanisms (Special Procedures Mandate Holders) and the United Nations Human Rights Treaty Bodies. This means generally NHRIs making an input to, participating in these human rights mechanisms and following up at the national level to the recommendations resulting from the international human rights system. In addition, NHRIs should also actively engage with the ICC and its Sub-Committee on Accreditation, Bureau as well as regional coordinating bodies of NHRIs.
- 1.5 Cooperation with other human rights institutions:** NHRIs should closely cooperate and share information with statutory institutions established also for the promotion and protection of human rights, for example at the state level or on thematic issues, as well as other organizations, such as NGOs, working in the field of human rights and should demonstrate that this occurs in their application to the ICC Sub-Committee.
- 1.6 Recommendations by NHRIs:** NHRI recommendations contained in annual, special or thematic human rights reports should normally be discussed within a reasonable amount of time, not to exceed six months, by the relevant government ministries as well as the competent parliamentary committees. These discussions should be held especially in order to determine the necessary follow up action, as appropriate in any given situation. NHRIs as part of their mandate to promote and protect human rights should ensure follow up action to recommendations contained in their reports.

2. Composition and guarantees of independence and pluralism

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

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

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

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

2.2 Selection and appointment of the governing body: The Sub-Committee notes the critical importance of the selection and appointment process of the governing body in ensuring the pluralism and independence of the National Institution. In particular, the Sub-Committee emphasizes the following factors:

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

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

2.4 Staffing by secondment:

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

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

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

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

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

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

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

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

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

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

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

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

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

2.10 Administrative regulation

The classification of an NHRI as a public body has important implications for the regulation of its accountability, funding, and reporting arrangements.

In cases where the administration and expenditure of public funds by an NHRI is regulated by the Government, such regulation must not compromise the NHRI's ability to

perform its role independently and effectively. For this reason, it is important that the relationship between the Government and the NHRI be clearly defined.

3. Methods of operation

4. Additional principles concerning the status of commissions with quasi-judicial competence

5. Additional issues

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

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

5.3 Functioning of an NHRI in a volatile context: The Sub-Committee acknowledges that the context in which an NHRI operates may be so volatile that the NHRI cannot reasonably be expected to be in full conformity with all the provisions of the Paris Principles. When formulating its recommendation on the accreditation status in such cases, the Sub-Committee will give due consideration to factors such as: political instability; conflict or unrest; lack of state infrastructure, including excessive dependency on donor funding; and the NHRI's execution of its mandate in practice.

6. Procedural issues

6.1 Application processes: With the growing interest in establishing National Institutions, and the introduction of the five-yearly re-accreditation process, the volume of applications to be considered by the Sub-Committee has increased dramatically. In the interest of ensuring an efficient and effective accreditation process, the Sub-Committee emphasises the following requirements:

- a) Deadlines for applications will be strictly enforced;
- b) Where the deadline for a re-accreditation application is not met, the Sub-Committee will recommend that the accreditation status of the National Institution be suspended until the application is considered at the next meeting;
- c) The Sub-Committee will make assessments on the basis of the documentation provided. Incomplete applications may affect the recommendation on the accreditation status of the National Institution;
- d) Applicants should provide documentation in its official or published form (for example, published laws and published annual reports) and not secondary analytical documents;
- e) Documents must be submitted in both hard copy and electronically;
- f) All application related documentation should be sent to the ICC Secretariat at OHCHR at the following address: National Institutions Unit, OHCHR, CH-1211

- Geneva 10, Switzerland and by email to: nationalinstitutions@ohchr.org; and
- g) It is the responsibility of the applicant to ensure that correspondence and application materials have been received by the ICC Secretariat.

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

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

6.3 NHRIs under review: Pursuant to Article 16 of the ICC Statute³, the ICC Chair or the Sub-Committee may initiate a review of a NHRI's accreditation status if it appears that the circumstances of that NHRI may have changed in any way which affects its compliance with the Paris Principles. Such a review is triggered by an exceptional set of circumstances considered to be temporary in nature. As a consequence, the regular re-accreditation process will be deferred until the review is completed.

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

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

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

6.5 Submission of information: Submissions will only be accepted if they are in paper or electronic format. The Statement of Compliance with the Paris Principles is the core component of the application. Original materials should be submitted to support or

³ Formerly article 3(g) of the ICC Rules of Procedure.

substantiate assertions made in this Statement so that the assertions can be validated and confirmed by the Sub-Committee. No assertion will be accepted without material to support it.

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

6.6 More than one national institution in a State: The Sub-Committee acknowledges and encourages the trend towards a strong national human rights protection system in a State by having one consolidated and comprehensive national human rights institution.

In very exceptional circumstances, should more than one national institution seek accreditation by the ICC, it should be noted that Article 39 of the ICC Statute⁴ provides that the State shall have one speaking right, one voting right and, if elected, only one ICC Bureau member.

In those circumstances the conditions precedent for consideration of the application by the Sub-Committee are the following:

- a) Written consent of the State Government (which itself must be a member of the United Nations).
- b) Written agreement between all concerned national human rights institutions on the rights and duties as an ICC member including the exercise of the one voting and the one speaking right. This agreement shall also include arrangements for participation in the international human rights system, including the Human Rights Council and the Treaty Bodies.

The Sub-Committee stresses the above requirements are mandatory for the application to be considered.

6.7 NHRI annual report: The Sub-Committee finds it difficult to review the status of an NHRI in the absence of a current annual report, that is, a report dated not earlier than one year before the time it is scheduled to undergo review by the Sub-Committee. The Sub-Committee stresses the importance for an NHRI to prepare and publicize an annual report on its national situation with regard to human rights in general, and on more specific matters. This report should include an account of the activities undertaken by the NHRI to further its mandate during that year and should state its opinions, recommendations and proposals to address any human rights issues of concern.

Adopted by International Coordinating Committee of National Human Rights Institutions for the Promotion and Protection of Human Rights (ICC) by email after the SCA meeting of March 2009.

Geneva, November 2009.

⁴ Formerly Rule 3 (b) of the ICC Rules of procedure.

Annex IV

DISCUSSION PAPER
on the
Proposed Review of the General Observations
Developed by the ICC Sub-Committee on Accreditation

March 2010

Submitted by the
Ad hoc SCA Working Group on the Proposed Review of General Observations

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INTRODUCTION

A.1 Purpose of Discussion Paper

This Discussion Paper has been prepared for the consideration of the Sub-Committee on Accreditation (SCA) of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) at its first session of 2010, held from 29 March to 1 April, 2010, in Geneva, Switzerland, under the auspices of the United Nations Office of the High Commissioner for Human Rights (OHCHR).

It serves to initiate focused discussions and seek feedback on the proposal to undertake a review of the General Observations developed by the SCA. The Paper aims to enable the SCA to reach a decision as to what, if any, steps should be taken to review the existing General Observations and what the process should be to do that, as well as to define a process for development of future General Observations. This Paper may ultimately contribute to the adoption by the ICC of a Decision Paper to undertake a review of the General Observations in the manner proposed by the SCA.

A.2 Format of Discussion Paper

The Discussion Paper includes a Background section and an additional three substantive parts:

- The Background section provides a brief overview of the evolution of the ICC accreditation process and its relevance on the international stage; the rationale for this Discussion Paper; and the composition of the *ad hoc* Working Group on the Proposed Revision of the General Observations.
- Part One provides an overview of the role of General Observations, including an examination of their intended purpose and their effect in practice on all stakeholders.
- Part Two examines whether the existing format of the General Observations effectively assists their implementation and uses the results of this analysis to propose means of addressing how their effectiveness may be enhanced.
- Part Three proposes the terms of reference for a formalized Working Group on the Revision of General Observations and suggests the possible scope of such a revision.

BACKGROUND

B.1 Evolution of ICC Accreditation Process

The accreditation process of the ICC is in a constant state of evolution, developing in synch with the organization's maturation and widespread recognition as a strong, credible and influential human rights actor at the national, regional and international levels.

Accreditation as an ICC Core Function

The ICC has always had in place a process for approving NHRIs for membership. Initially informal, it was later strengthened in 2004 with the promulgation of the SCA Rules of Procedures. The ICC established the SCA to support the implementation of its core function to promote the establishment and strengthening of national human rights institutions (NHRIs) in conformity with the *Paris Principles*⁵. The SCA is mandated to consider and review applications for accreditation, re-accreditation and special or other review, and to make recommendations to the ICC Bureau members with regard to the compliance of applicant institutions with the *Paris Principles*.⁶

Revision of ICC Accreditation Process

In April 2006, the ICC struck up a Working Group on Accreditation to examine its accreditation process taking into account three factors: (i) a sense that the [then] 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 NHRIs in the international arena and the corresponding need to ensure that they were truly legitimate; and (iii) the introduction of re-accreditation, that is, the requirement to periodically review the accreditation accorded to members in the past. The Working Group recommended 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. To accomplish this, it recommended that the process be based on the guiding principles of transparency, rigour and independence. In April 2008, the ICC adopted the recommendations of the Working Group, now captured in section 5 of the newly created ICC Statute and in the appropriate revision of the SCA's Rules of Procedure.

Issuance of General Observations in SCA Recommendations

⁵ *The Principles Relating to the Status of National Human Rights Institutions*, reproduced in the Appendix of UN General Assembly resolution 48/134 of 20 December 1993; Section 7, ICC Statute.

⁶ Section 5, ICC Statute.

In October 2006, the SCA commenced its practice of issuing General Observations on common and important interpretative issues on the implementation of the *Paris Principles*. This practice was borne out of an effort to ensure a consistent, transparent and coherent accreditation process. The ICC plenary adopted the list of General Observations at its 18th session in March 2007. However, the ICC did not adopt the lists of General Observations developed at the SCA's sittings in March and October 2007 until the ICC's 20th session, held in April 2008. Presently, the SCA continues to develop General Observations at its bi-annual sittings in line with the SCA Rules of Procedure⁷, which it recommends for formal adoption by the ICC Bureau through its sessional reports. Hence, the current list of General Observations, included as an annex to the SCA reports and classified according to the themes contained in the *Paris Principles*, is not exhaustive and is expected to continue to evolve as the SCA continues to review applications for accreditation status.

Relevance of ICC Accreditation Status in International Fora

The strengthening of the accreditation process has gone hand-in-hand with the expanding impact of the ICC accreditation status at the domestic, regional and international levels. As of 2005, institutions accredited by the ICC as being fully in compliance with the *Paris Principles*, that is, possessing 'A status' accreditation, are permitted to submit documents, written statements and make oral interventions on all agenda items before the [then] United Nations (UN) Human Rights Commission and its successor, the UN Human Rights Council.⁸ Other international human rights mechanisms, such as the Convention on the Rights of Persons with Disabilities (CRPD) and the Optional Protocol to the Convention Against Torture (OPCAT), have too recognized the importance of NHRIs and have accorded them prominent roles as national implementation and monitoring bodies. Currently, ICC accredited 'A status' NHRIs are seeking participation at the UN Commission on the Status of Women. Encouraged by the strengthened ICC accreditation process, regional bodies, such as that of the Asia Pacific Forum of NHRIs (APF), have adopted the strengthened ICC accreditation process to determine *Paris Principles* compliance for its membership, in lieu of its own accreditation process.⁹

Continued Enhancement of ICC Accreditation Process

The broadened ramification of possessing an ICC accreditation status has expectedly increased the scrutiny of the accreditation process. As a core function of the ICC mandate, members are invested in ensuring its accreditation process remains a credible one, as acceptance of its legitimacy is key to ensuring the wider credibility of the ICC and NHRIs at every level. The increased reliance on domestic human rights institutions as valuable sources of information places a greater responsibility on the ICC to ensure these institutions have the capacity to cope with their enhanced role in a variety of arenas: domestic, regional and international. Hence, it is in the ICC's best interest in fulfilling its responsibility to all its stakeholders, including its members, States and civil society, that it continue to refine and add value to its accreditation process through enhancing its credibility comprehensibility and usefulness as a rational and predictable assessment mechanism.

B.2 Rationale for Discussion Paper

⁷ Sections 6.2 and 6.3, ICC Sub-Committee on Accreditation Rules of Procedure.

⁸ United National Human Rights Commission Resolution 2005/74, 20 April 2005.

⁹ This decision was made at the APF 14th General Meeting held in Amman, Jordan, in August 2009.

The SCA is recommended to consider the suggestions made by both the ICC membership and the Bureau and implement them where possible.

ICC members have identified challenges with the existing General Observations developed by the SCA. More specifically, a suggestion was made at the 14th Annual Meeting of the APF held in August 3-6, 2009, in Amman, Jordan, that a review of the General Observations be undertaken in the manner described below:

The Sub-Committee's General Observations now address a broad range of issues, providing assistance and advice to member NHRIs on the interpretation of *Paris Principles* requirements. As part of the APF's approach to providing greater support for Asia Pacific regional participation on the ICC SCA, and as a consequence of the proposal to adopt the ICC accreditation process for determining *Paris Principles* compliance for APF members, the secretariat will seek to work with our representative and the ICC SCA in 2010 to promote a review of General Observations to ensure consistency of approach and application, to delineate between fundamental requirements and best practice, and to ensure procedural fairness in the accreditation process.¹⁰

The ICC Bureau has reiterated this requirement for greater comprehensibility of the accreditation process through its accreditation-focused strategic planning suggestions.¹¹ The following suggestions received implicate the review of the General Observations with a view to enhancing their legitimacy, clarity and value:

Suggestion 1. Better prepare NHRIs for review by the SCA

- Work closely with NHRIs to ensure that NHRIs fully understand the reporting requirements and the assessment criteria.

Suggestion 3. Review transparency of accreditation process

- Review SCA process to ensure that the accreditation is as transparent as possible and that NHRIs understand and support SCA processes and procedures.

Suggestion 5. Improve systematic follow-up to SCA recommendations

- Develop a follow-up procedure with special consideration for: informing NHRIs' national government of SCA decision; involvement of Regional Chairs and Coordinators, mechanisms and partners so that NHRIs and their partners have a better understanding of actions that need to be undertaken to improve their compliance with the *Paris Principles*.

The SCA is recommended to consider the suggestions made by both the ICC membership and the Bureau and implement them where possible. It is out of this context that this Discussion Paper on the Proposed Review of the General Observations is borne.

¹⁰ Forum Councillors Meeting, 14th Annual Report of the Asia-Pacific Forum of NHRIs, p.73: http://www.asiapacificforum.net/about/annual-meetings/14th-jordan-2009/downloads/forum-councillors-meeting-1/Forum_Councillor_Report.pdf

¹¹ As communicated in a memo from the ICC Chair to the SCA Chair on 4 February 2010.

B.3 Composition of *ad hoc* Working Group on the Proposed Review of the General Observations

The authors of this Discussion Paper are representatives of the Canadian Human Rights Commission and the Secretariat of the Asia-Pacific Forum of NHRIs.

At its second session of 2009, held on 3-6 November in Geneva, Switzerland, the SCA decided to strike up an *ad hoc* Working Group on the Proposed Review of General Observations, composed of representatives from the Canadian Human Rights Commission and the Secretariat of the Asia-Pacific Forum of NHRIs. The National Institutions and Regional Mechanisms Section, OHCHR, was consulted in its capacity as ICC Secretariat.

The Working Group was tasked to produce a Discussion Paper which would serve to identify the substantive issues and processes that should be considered and discussed by the SCA at its first session of 2010, to be held from 29 March to 1 April, in Geneva, Switzerland, with regards to the proposed revision of the General Observations.

PART ONE: Role of General Observations

1.1 Definition of General Observations

Sections 6.2 and 6.3 of the SCA Rules of Procedure define the authority to develop General Observations and detail their intended use. In practice, the General Observations are drafted by the SCA at its twice-yearly sittings and recommended for adoption by the ICC Bureau through its sessional reports.

The concept of General Observations was canvassed by the ICC Working Group on Accreditation in its Decision Paper placed before the ICC plenary at its 20th session held in April 2008. It stated: “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 utilize General Observations and that the Sub-Committee Rules of Procedure be amended”.¹² Following the adoption of the Decision Paper, the SCA Rules of Procedure now include a provision outlining the express authority of the SCA to develop General Observations for the purpose outlined as follows:

6. Report and Recommendations

...

6.2 General Observations are to be developed by the Sub-Committee and approved by the ICC Bureau.

6.3 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*.

¹² *Decision Paper on the Review of ICC Accreditation Procedures for National Human Rights Institutions (NHRI)*, Submitted by the ICC Working Group on Accreditation, March 2008, p. 20.

The Practice of Drafting General Observations

The SCA continues to develop General Observations in line with the above provisions at its bi-annual sittings, with the support of the ICC Secretariat (OHCHR). In practice, the SCA members will, during their analysis of the accreditation applications, take a broad review of particular issues uncovered through the facts of the applications. Doing so enables the SCA members to identify either common or important issues requiring greater clarification of the *Paris Principles*, and then to draft a General Observation in response. Finalizing the draft entails vigorous debate by the SCA members on the precise wording of the General Observation until unanimous consensus is reached. The new General Observation is then recommended for formal adoption through its report to the ICC Bureau. Following which, it is made public and may be cited in any future recommendations made by the SCA. Previously, it was the practice of the SCA to finalize a General Observation in one sitting. Since March 2009, it decided to extend the time in which to do so over two sessions as a means to facilitate greater ICC member input.

1.2 Purpose of General Observations

The ICC, through the expertise of the SCA, has a unique and independent role to play in educating NHRIs, States and civil society by clarifying how the *Paris Principles* should be implemented in practice, and thereby helping to ensure strengthened, independent and effective institutions.

The *Paris Principles*¹³, endorsed by the World Conference on Human Rights and the UN General Assembly, are the minimum international standards for the establishment of NHRIs. They provide a broad normative framework for the status, structure, mandate, composition, power and methods of operation of the principal domestic human rights mechanism. As a core function, the ICC promotes the establishment and strengthening of NHRIs in conformity with the *Paris Principles*¹⁴ and uses the *Principles* as criteria to determine ICC membership. The SCA has been delegated the task of assessing institutional compliance with the *Paris Principles*.¹⁵

Ambiguity Inherent in Paris Principles

The *Paris Principles* provide only a general framework for the establishment of NHRIs. It is likely that it was intentionally drafted in such an inexplicit manner to facilitate its adoption, permitting States to retain a measure of discretion in its implementation.¹⁶ This generality, combined with the complex concepts addressed in the *Principles*, has meant that there is a lack of clarity, and in some cases, no clear consensus on what they require. In practice, the flexibility afforded by the framework, as applied to a wide variety of domestic circumstances, has resulted in an equally wide variety of institution models, including the: human rights commission; advisory committee; ombudsman; and, human rights institute models.

¹³ *The Principles Relating to the Status of National Human Rights Institutions*, reproduced in the Appendix of UN General Assembly resolution 48/134 of 20 December 1993.

¹⁴ Section 7, ICC Statute.

¹⁵ Section 1, Sub-Committee on Accreditation Rules of Procedure.

¹⁶ A. Pohjola, *The Evolution of National Human Rights Institutions - The Role of the United Nations*, The Danish Institute for Human Rights: 2006, page 14.

Enriched Knowledge Base

An inherent obligation in fulfilling the ICC core function to strengthen NHRIs in conformity with the *Paris Principles* is the clarification of its requirements to stakeholders. To realize this, the SCA has used the platform of the ICC accreditation process to develop an important body of jurisprudence in the form of General Observations to give meaning to the content and scope of the *Principles*. The SCA, with its depth of experience and extensive study of the guiding principles, is well placed to articulate its standards and deliver the necessary guidance to ensure a consistency of approach in its implementation and application. Ultimately, the SCA's work in developing a comprehensive and detailed interpretation of the *Paris Principles* is of widespread value as it serves to enrich the understanding of the requirements to ensure the effective establishment, functioning and strengthening of NHRIs.

Universalized Recommendations

This work is done in tandem with the issuance of specific recommendations on individual accreditation applications, which are limited in application and value to the NHRI in question. Inversely, the General Observations, being independent of a specific set of facts pertaining to a single domestic context, are universal in their application and provide guidance in both individual cases and more generally. Ultimately a synthesis of the most important issues of interpretation that have been uncovered by the individual accreditation applications, the General Observations are relevant to NHRIs globally, including those not currently the subject of the immediate accreditation review.

1.3 Effect of General Observations

As interpretations of the *Paris Principles*, the General Observations are a key normative tool used to: (i) accelerate NHRI maturity; (ii) encourage State compliance; and, (iii) strengthen the accreditation review process.

Of Instructive Value to NHRIs

The appropriate implementation of General Observations is key to advancing NHRI maturity. By clarifying the requirements of the *Paris Principles*, the General Observations provide NHRIs with accessible, relevant and readily contextualized norms to speed their evolution into more efficient and effective institutions, resulting in the enhanced promotion and protection of human rights on the ground. The General Observations further enable stakeholders to take a proactive approach to effect the necessary changes to their own processes and mechanisms without requiring the SCA to provide them with specific recommendations resulting from the outcome of an accreditation review. General Observations listed in sections 1.4 to 1.6, inclusively and in section 5 provide instruction directly to NHRIs in this respect.

1.3.1 Of Persuasive Value to States

NHRIs are established by governments for the specific purpose of advancing and defending human rights at the domestic level, and are acknowledged to be one of the most important means by which governments bridge the implementation gap between their international human rights obligations and actual enjoyment of human rights on the ground. The establishment and strengthening of NHRIs pursuant to the *Paris Principles* falls within the set of international human rights commitments made by States.¹⁷ NHRIs are reliant upon their national government to implement many of the provisions of the *Principles*, including their legislative establishment and provision of adequate funding. Where the SCA notes as an issue of concern, the failure of the State to fulfill its obligations pursuant to the *Paris Principles*, the NHRI may use the standards articulated in the General Observations to recommend the action required by the State to effect the necessary change to address or remedy issues before the accreditation status of the NHRI is next reviewed. General Observations listed in sections 1.1 to 1.3 and in sections 2 to 4, inclusively, are classified as those which the State only may ultimately action.

Given the public nature of the SCA recommendations, should a State fail to fulfill its duty to effect the change recommended, this may put into question the legitimacy of the State's commitment to the promotion and protection of human rights at the domestic level. The negative perception may be enough of a motivator to encourage States to make the required changes. In this way, General Observations may be used to instigate momentum for improved State compliance of the *Paris Principles* within a discrete time frame.

1.3.2 Of Guiding Value to SCA

The SCA is mandated to make recommendations to the ICC Bureau on the compliance of NHRIs with the *Paris Principles*. However, neither the ICC Statute nor the SCA Rules of Procedure provides guidance on the basis upon which to make this determination. It has therefore fallen upon the SCA, with the support of the ICC Secretariat (OHCHR), to develop its own guidelines to effect a transparent, independent and rigorous assessment mechanism. Applying its understanding of the *Paris Principles* to the reality of current issues faced by NHRIs, it has developed an additional set of normative tools to deliver relevant procedural and substantive guidance to its analysis of accreditation applications. The General Observations have also been developed to preserve the institutional memory of the SCA and to ensure a consistency in approach taken by its rotational membership. The General Observations, which guide the SCA with substantive issues, are listed in sections 1 through 5. The procedural-type General Observations are listed in section 6.

¹⁷ Upon the adoption of the UN General Assembly Resolution 48/134 of 20 December 1993.

PART TWO: Reviewing General Observations

2.1 Assessment of Effectiveness of Existing General Observations

Presently, General Observations are undervalued and underutilized by stakeholders for two main reasons: (i) lack of stakeholder confidence in their legitimacy and purpose; and (ii) lack of clarity of their requirements due to ambiguities in the wording of existing General Observations.

The identification of the limitations of the existing General Observations and the challenges faced by stakeholders in appreciating their relevance is key in determining the extent of their effectiveness. The outcome of such an analysis is indicative of the need for and scope of their review. Two main factors contributing to the limited effectiveness of General Observations have been identified and are discussed in this section.

2.1.1 Lack of Stakeholder Confidence in the Legitimacy and Purpose of General Observations

Acceptance Dependent Upon Credibility of Process

The far-reaching implications of the SCA recommendations have brought greater attention to the ICC accreditation process. More than ever before, invested stakeholders are keen to understand the process in order to make effective use of it and to be able to fully respond to the requirements of the SCA recommendations. This heightened interest has expectedly resulted in the increased scrutiny of the process and has led to the circumspection of its legitimacy, value and usefulness. Support for General Observations, specifically, is further mired by their lack of formal authority to bind States. In contrast to the *Paris Principles*, which received the backing of the Vienna World Conference of Human Rights and the UN General Assembly, State parties have never formally acquiesced to the General Observations. Hence, stakeholder support for them is greatly dependent upon their understanding and appreciation of the ICC accreditation process.

Challenge #1: No knowledge-development amongst stakeholders

Although the ICC Accreditation process has undergone much review since its inception with a view to becoming a fairer, more transparent and more rigorous process, it remains largely inaccessible, and therefore incomprehensible, to many in the ICC membership and to other stakeholders. The lack of guidelines that exist to demonstrate how the SCA assesses compliance with the *Paris Principles*, including details on how the sessions are conducted and how the recommendations and General Observations are drafted, has left stakeholders with little appreciation of the ICC accreditation process, the SCA's procedures and the force and effect of the SCA recommendations. Specific to General Observations, little education has been provided to stakeholders regarding their role, purpose, value, usefulness, applicability, requirements contained in, and their relevance to the stakeholders' obligations pursuant to the *Paris Principles*. As a result, such unfamiliarity with the General Observations has put into question both the SCA's authority to make such weighted pronouncements on the *Principles* and stakeholders' support of them.

Challenge #2: Informal Drafting Process

The current manner in which General Observations are drafted is *ad hoc*, that is, the SCA members do not follow any written, formalized guidelines regarding their formulation or the scope of their content. The lack of participation of stakeholders in the drafting process means that the absence of such guidelines mystifies the development of General Observations to those outside the SCA. The distancing of stakeholders from the resulting pronouncements on the *Paris Principles*, specifically, and from the ICC accreditation process, generally, equally estranges stakeholders from recognizing their relevance and value. Conceivably, a tool perceived as having little value or application in reality is determinative of the extent of its implementation. It is therefore necessary that the SCA employ an appropriate and accepted method that is rationale, predictable and reproducible to ensure the General Observations remains valuable and credible.

2.1.2 Lack of Clarity in the Wording of Existing General Observations

The influence of General Observations is dependent upon the degree to which they interpret a particular provision of the *Paris Principles* in a serious, probing and illuminating way. Achieving such coherency and comprehensiveness regarding the scope of their application is challenged by the universal nature of General Observations, being transcendental of time and the material facts of an accreditation application. As such, with little to ground the General Observation in reality, they may risk being considered too abstract and irrelevant to be applied in practice.

The current format of drafting and issuing General Observations exacerbates the probability of this drafting failure. As brief summaries of the SCA's extensive debate on complex issues of interpretation, the General Observations, in the format ultimately issued, lack the substance of their relevance and application to the *Principles*. Thus, the brevity of the enunciations coupled with the lack of context for their inspiration act as impediments to their comprehension and resulting effective adoption by stakeholders. Moreover, the limited time available to draft the General Observations may serve to compromise the quality of the persuasiveness of the argument put forth. Ultimately, given that stakeholders are entrusted with the implementation of the General Observations, if their scope of application is neither fully understood nor deemed relevant or credible, they risk either not being implemented in the manner intended by the SCA, or not being implemented at all.

2.2 Recommendations to Enhance the Effectiveness of General Observations

To enhance the legitimacy, value and utilization of General Observations, it is necessary to: (i) create guidelines on the drafting process; (ii) clarify the meaning of those in existence; and, (iii) encourage stakeholder knowledge-development on their purpose, value and use.

Upon adopting the Decision Paper on Accreditation, the ICC plenary agreed that whenever the ICC reviews its accreditation process this must be done with a view to strengthening the credibility and efficiency of the process as well as that of its inherent fairness. The ICC membership adopted the proposal of the Working Group on Accreditation that in order to ensure a fair and impartial accreditation process which satisfies the principles of natural justice, it must be based on the principles of rigour, transparency independence. It is therefore recommended that the framework articulated by this 'principled approach' guide any future review of the accreditation process and SCA procedures, including the proposed review of the General Observations.

An assessment of the effectiveness of the existing General Observations has revealed the need for the creation of focused guidelines on the drafting process, the revision of existing General Observations with due regard to the quality and clarity of the argument for their applicability, and greater stakeholder outreach and education. It is therefore recommended that a review be undertaken with respect to strengthening:

- The accessibility and legitimacy of the SCA process through the increased participation of stakeholders in a formalized drafting process of General Observations;
- The development of tailored, clear and comprehensive General Observations with a view to their robustness, relevancy, and value;
- The understanding, awareness and support for the value of the accreditation process, the SCA's procedures and its recommendations, thereby promoting the significance of A status accreditation at national, regional and international levels; and
- The use of the requirements of General Observations to effect appropriate change and to inform stakeholders on the scope of their obligations pursuant to the *Paris Principles*.

2.3 Risk of Opening General Observations for Revision

The revision of General Observations is a necessary implication of ensuring the *Paris Principles* remain coherent and current in their application.

The revision of General Observations is without risk to undermining their very existence as the ICC plenary has already accepted them as a corner stone of the accreditation review process, having received full support by the ICC membership at its 20th session. The ICC Bureau continues to endorse the General Observations developed by the SCA through the adoption of its bi-annual reports. Furthermore, being universal in their application, the revision of General Observations will not impact the precedent of their use as they are in contrast to the specific SCA recommendations issued to individual NHRIs which are based on unique fact situations. Moreover, such revision is necessary to ensure that NHRIs are equipped with a coherent and current interpretation of the *Principles* so that they remain relevant and applied appropriately to the current issues facing NHRIs.

PART THREE: Defining the Review

3.1 Next Steps: Establishing terms of reference for the Working Group on the Revision of General Observations.

* * *

Proposed Terms of Reference
for the
International Coordinating Committee of National Human Rights Institutions
Working Group on the Revision of General Observations

1. Background

During its first session of 2010, which took place from 29 March – 1 April, 2010, in Geneva, Switzerland, the members of the ICC Sub-Committee on Accreditation (SCA) decided to establish a Working Group in relation to the General Observations issued by the SCA. This decision was taken in light of a Discussion Paper prepared for the consideration of the SCA that served to initiate focused discussions and seek feedback on the proposal to undertake such a review.

2. Composition of Working Group

The Working Group, to be chaired by the Canadian Human Rights Commission, shall comprise of the following members:

- Outgoing SCA Chair and SCA representative of the Americas:
Canadian Human Rights Commission,
Mr. David Langtry (david.langtry@chrc-ccdp.ca)
- Observer to the SCA:
Secretariat of the Asia-Pacific Forum of NHRIs,
Mr. Greg Heesom (gregheesom@asiapacificforum.net)

In its capacity as ICC Secretariat, the National Institutions and Regional Mechanisms Section (NIRMS) of the Office of the High Commissioner for Human Rights (OHCHR), will be consulted by the Working Group and will provide it with the necessary support (contact: Mr. Gianni Magazenni; gmagazenni@ohchr.org).

3. General Observations Issued by the SCA

Sections 6.2 and 6.3 of the SCA Rules of Procedure define the authority of the SCA to develop General Observations and detail their intended use. In practice, the General Observations are drafted by the SCA at its twice-yearly sittings and recommended for adoption by the ICC Bureau through its sessional reports. As interpretive tools of the *Paris Principles*, the General Observations are a key normative tool used to accelerate NHRI maturity, gain momentum for improving State compliance with the *Paris Principles*, and, strengthen the accreditation review process.

An analysis of the limitations of the existing General Observations and the challenges faced by stakeholders in appreciating their relevance has identified two main factors that contribute to their undervaluation and underutilization, that is, the lack of stakeholder confidence in their legitimacy and purpose, and the lack of clarity of their requirements due to ambiguities in their wording. Thus, as a measure to enhance their effectiveness, it is necessary to undertake a review of the drafting process and wording of General Observations, as well as undertaking the knowledge-development of stakeholders.

4. Issues to Address in Review

The members of the Working Group are requested to recommend proposals on the following three issues:

- (i) Standardizing the future development of General Observations through the issuance of guidelines on the drafting process;
- (ii) Revising the existing General Observations to enhance their comprehensibility, relevancy, and value; and
- (iii) Enhancing stakeholder outreach and education on General Observations to NHRIs, States, civil society, regional and international human rights mechanisms, and other partners.

The Working Group is encouraged to ensure that in its review of the General Observations, the proposals recommended to address the above issues are formulated with a view to strengthening:

- The accessibility and legitimacy of the SCA process through the increased participation of stakeholders in a formalized drafting process of General Observations;
- The development of tailored, clear and comprehensive General Observations with a view to their robustness, relevancy, and value;
- The understanding, awareness and support for the value of the accreditation process, the SCA's procedures and its recommendations, thereby promoting the significance of A status accreditation at national, regional and international levels; and
- The use of the requirements of General Observations to effect appropriate change and to inform stakeholders on the scope of their obligations pursuant to the *Paris Principles*.

5. Methodology of Working Group

The Working Group shall be responsible for providing input into a Discussion Paper to be prepared by the Group's Chairperson. The Discussion Paper shall be prepared by October 2010 for circulation to the ICC Bureau for its comment and review. The SCA Chair will report to the ICC Bureau at its second meeting of 2010 on the recommendations of the Working Group.

A Decision Paper, taking into account the recommendations of the ICC Bureau, shall then be made ready for circulation to members of the ICC at its 25th General Meeting to take place in March 2011. The SCA Chair, in the course of delivering the annual report before the plenary, will recommend for adoption the recommendations of the Working Group.

ANNEX A: Principles relating to the status of national institutions

A. Competence and responsibilities*

1. A national institution shall be vested with competence to promote and protect human rights.
2. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.
3. A national institution shall, inter alia, have the following responsibilities:
 - a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicize them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:
 - (i) Any legislative or administrative provisions, as well as provisions relating to judicial organizations, intended to preserve and extend the protection of human rights; in that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights; it shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;
 - (ii) Any situation of violation of human rights which it decides to take up;
 - (iii) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;
 - (iv) Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government;
 - b) To promote and ensure the harmonization of national legislation regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;
 - c) To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;
 - d) To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations and, where necessary, to express an opinion on the subject, with due respect for their independence;
 - e) To cooperate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the promotion and protection of human rights;

- f) To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;
- g) To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.

B. Composition and guarantees of independence and pluralism

- 1. The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:
 - a) Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;
 - b) Trends in philosophical or religious thought;
 - c) Universities and qualified experts;
 - d) Parliament;
 - e) Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).
- 2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.
- 3. In order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.

C. Methods of operation

Within the framework of its operation, the national institution shall:

- a) Freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner;
- b) Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;
- c) Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;

- d) Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly convened;
- e) Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions;
- f) Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular ombudsmen, mediators and similar institutions);
- g) In view of the fundamental role played by the non-governmental organizations in expanding the work of the national institutions, develop relations with the non-governmental organizations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.

Additional principles concerning the status of commissions with quasi-jurisdictional competence

A national institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organizations, associations of trade unions or any other representative organizations. In such circumstances, and without prejudice to the principles stated above concerning the other powers of the commissions, the functions entrusted to them may be based on the following principles:

- a) Seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality;
- b) Informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them;
- c) Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;
- d) Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations and administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.

* *Paris Principles* defined at the first International Workshop on National Institutions for the Promotion and Protection of Human Rights in Paris 7-9 October 1991, adopted by Human Rights Commission Resolution 1992/54, 1992 and General Assembly Resolution 48/134, 1993.

ANNEX B: Extract from ICC Statute – section 5

Section 5: Paris Principles Accreditation

Note: Pursuant to Human Rights Council resolution 5/1, VII Rules of Procedure, rule 7(b), participation of NHRIs in the work of the Human Rights Council is based on arrangements and practices agreed upon by the Human Rights Commission including resolution 2005/74 of 20 April 2005. Resolution 2005/74, paragraph 11(a), permitted NHRIs that are accredited by the Sub-Committee on Accreditation to exercise participation rights in the Human Rights Commission and subsidiary bodies of the Commission.

Art. 10 Application for Accreditation Process

Any NHRI seeking accreditation under the *Paris Principles* shall apply to the Chairperson of the ICC. Through the ICC Secretariat, that NHRI shall supply the following in support of its application:

- a copy of the legislation or other instrument by which it is established and empowered in its official or published format;
- an outline of its organizational structure including staff complement and annual budget;
- a copy of its most recent annual report or equivalent document in its official or published format;
- 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 Bureau may determine the form in which this statement is to be provided. The application shall be decided pursuant to Articles 11 and 12 of this Statute.

Art 11.1 All applications for accreditation under the *Paris Principles*, shall be decided under the auspices of, and in cooperation with, OHCHR by the ICC Bureau after considering a report from the Sub-Committee on Accreditation on the basis of written evidence submitted.

Art 11.2 In coming to a decision, the ICC Bureau and the Sub-Committee shall adopt processes that facilitate dialogue and exchange of information between it and the applicant NHRI as deemed necessary to come to a fair and just decision.

Art 12 Where the Sub-Committee on Accreditation comes to an accreditation recommendation, it shall forward that recommendation to the ICC Bureau whose decision is final subject to the following process:

- The recommendation of the Sub-Committee shall first be forwarded to the applicant;
- An applicant can challenge a recommendation by submitting a written challenge to the ICC Chairperson, through the ICC Secretariat, within twenty eight (28) days of receipt.
- Thereafter the recommendation will be forwarded to the members of the ICC Bureau for decision. If a challenge has been received from the applicant, the challenge together with all relevant material received in connection with both

the application and the challenge will also be forwarded to the members of the ICC Bureau;

- Any member of the ICC Bureau who disagrees with the recommendation shall, within twenty (20) days of its receipt, notify the Chair of the Sub-Committee and the ICC Secretariat. The ICC Secretariat will promptly notify all ICC Bureau members of the objection raised and will provide all necessary information to clarify that objection. If within twenty (20) days of receipt of this information at least four members of the ICC Bureau coming from not less than two regional groups notify the ICC Secretariat that they hold a similar objection, the recommendation shall be referred to the next ICC Bureau meeting for decision;
- If at least four members coming from two or more regional groups do not raise objection to the recommendation within twenty (20) days of its receipt, the recommendation shall be deemed to be approved by the ICC Bureau;
- The decision of the ICC Bureau on accreditation is final.

Art 13 Should the ICC Bureau decide to decline an application for accreditation of any NHRI by reason of its failure to comply with the *Paris Principles*, the ICC Bureau or its delegate may consult further with that institution concerning measures to address its compliance issues.

Art 14 Any NHRI whose application for accreditation has been declined may reapply for accreditation, according to the guidelines under Article 10, at any time. Such an application may be considered at the next meeting of the Sub Committee on Accreditation.

Art 15 **Periodic Re-accreditation**
All NHRIs that hold an 'A' status are subject to re-accreditation on a five year cyclical basis. Article 10 applies to NHRIs undergoing re-accreditation. In particular reference to an application for accreditation means both the initial application and the application for reaccreditation.

Art 16.1 **Review of Accreditation Process**
Where the circumstances of any NHRI change in any way which may affect its compliance with the *Paris Principles*, that NHRI shall notify the Chairperson of those changes and the Chairperson shall place the matter before the Sub-Committee on Accreditation for review of that NHRI's accreditation status.

Art 16.2 Where, in the opinion of the Chairperson of the ICC or of any member of the Sub-Committee on Accreditation, it appears that the circumstances of any NHRI that has been accredited with an 'A' status under the former Rules of Procedure 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 NHRI's accreditation status.

Art 16.3 Any review of the accreditation classification of a NHRI must be finalized within eighteen (18) months.

Art 17 On any review the Chairperson and Sub-Committee on Accreditation shall have all the powers and responsibilities as in an application under Article 10.

Art 18 **Alteration of Accreditation Classification**
Any decision that would serve to remove accredited 'A' status from an applicant can

only be taken after the applicant is informed of this intention and is given the opportunity to provide in writing, within one (1) year of receipt of such notice, the written evidence deemed necessary to establish its continued conformity to the *Paris Principles*.

- Art 19** An accreditation classification held by a NHRI may be suspended if the NHRI fails to submit its application for re-accreditation or fails to do so within the prescribed time without justification.
- Art 20** An accreditation classification may lapse if a NHRI fails to submit an application for reaccreditation within one (1) year of being suspended for failure to reapply, or if a NHRI under review under Article 16 of this Statute fails to provide sufficient documentation, within eighteen (18) months of being placed under review, to satisfy the body determining membership under this Statute that it remains in conformity with the *Paris Principles*.
- Art 21** NHRIs whose accreditation has been suspended remain suspended until the body determining their compliance with the *Paris Principles* under this Statute comes to a determination of their accreditation status or until their accreditation lapses.
- Art 22** NHRIs whose accreditation status has lapsed or been revoked may regain accreditation only by re-applying for accreditation as provided for in Article 10 of this Statute.
- Art 23** In the event that accreditation lapses or is revoked or suspended, all rights and privileges conferred on that NHRI through accreditation immediately cease. In the event that a NHRI is under review, it shall retain the accreditation 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.

*EXECUTED BY: Ms. Jennifer Lynch, Q.C.
30 July 2008
Amended at a General Meeting held at Nairobi, 21st October 2008
Amended at a General Meeting held at Geneva, 24th March 2009*

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

1. Mandate

In accordance with the Statute of the Association International Coordination Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) (Article 1.1), the Sub-Committee on Accreditation has the mandate to review and analyse accreditation applications forwarded by the ICC Chairperson and to make recommendations to the ICC 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 NHRI accredited 'Status A' for each of the four (4) regional groups as established by the ICC Statute (Section 7), namely Africa, Americas, Asia-Pacific, and Europe.
- 2.2** Members are appointed by regional groups 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 NHRI in that region.
- 2.4** The Office of the United Nations High Commissioner for Human Rights (OHCHR) shall be a permanent observer to the Committee and in its capacity as Secretariat of the ICC, support the Sub-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 group representative to the Sub-Committee on Accreditation shall facilitate the application process for NHRIs in the region.
- 3.2** The regional grouping representative shall supply NHRIs 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 Statute (Section 5), any NHRI 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. Subject to rule 3.5 of these Rules, an Institution undergoing reaccreditation 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 deadline 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** Any civil society organization wishing to provide relevant information pertaining to any accreditation matter before the Sub-Committee shall provide such information in writing to

the ICC Secretariat at least four (4) months prior to the meeting of the Sub-Committee.

- 3.7** The ICC Chairperson, with support from the ICC Secretariat, will ensure that copies of the applications and supporting documentation are provided to each member of the Sub-Committee on Accreditation.
- 3.8** The ICC Chairperson, with support from the ICC Secretariat, 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 General Meeting of the ICC in order to consider any accreditation matter under Section 5 of the Statute.
- 4.2** The Chairperson of the Sub-Committee on Accreditation may invite any person or institution to participate in the work of the Sub-Committee as an observer.
- 4.3** Additional meetings of the Sub-Committee may be convened by the Chair with the agreement of the ICC Chairperson and members of the Sub-Committee on Accreditation.
- 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 Bureau for determination and guidance. An ultimate decision as to accreditation can only be taken once the ICC Bureau provides that decision or guidance.
- 4.5** The Sub-Committee may, pursuant to Article 11.2 of the ICC Statute, 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 Article 11.2, 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 Bureau 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 Statute, the different classifications for accreditation used by the Sub-Committee are:

A: Voting Member - Fully in compliance with each of the Paris Principles;

B: Non-Voting Member - Not fully in compliance with each of the Paris Principles or insufficient information provided to make a determination;

C: No Status – Not in compliance with the Paris Principles.

6. Report and Recommendations

- 6.1** Pursuant to Article 12 of the ICC Statute, where the Sub-Committee on Accreditation comes to an accreditation recommendation, it shall forward that recommendation to the ICC Bureau whose final decision is subject to the following process:
- (i) The recommendation of the Sub-Committee shall first be forwarded to the applicant;
 - (ii) An applicant can challenge a recommendation by submitting a written challenge to the ICC Chairperson, through the ICC Secretariat, within twenty eight (28) days of

receipt;

- (iii) Thereafter the recommendation will be forwarded to the members of the ICC Bureau for decision. If a challenge has been received from the applicant, the challenge together with all relevant material received in connection with both the application and the challenge will also be forwarded to the members of the ICC Bureau;
- (iv) Any member of the ICC Bureau who disagrees with the recommendation shall, within twenty (20) days of its receipt, notify the Chair of the Sub-Committee and the ICC Secretariat. The ICC Secretariat will promptly notify all ICC Bureau members of the objection raised and will provide all necessary information to clarify that objection. If within twenty (20) days of receipt of this information at least four members of the ICC Bureau coming from not less than two regional groups notify the ICC Secretariat that they hold a similar objection, the recommendation shall be referred to the next ICC Bureau meeting for decision;
- (v) If at least four members of the ICC Bureau coming from not less than two regional groups do not raise objection to the recommendation within twenty (20) days of its receipt, the recommendation shall be deemed to be approved by the ICC Bureau;
- (vi) The decision of the ICC Bureau on accreditation is final.

6.2 General Observations are to be developed by the Sub-Committee and approved by the ICC Bureau.

6.3 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. Amended by the members of the ICC at its 20th session, held on 15 April 2008, Geneva, Switzerland.*

ANNEX D: ICC Sub-Committee on Accreditation General Observations

1. Competence and responsibilities

- 1.1 Establishment of national institutions:** An NHRI must be established in a constitutional or legal text. Creation by an instrument of the Executive is not adequate to ensure permanency and independence.
- 1.2 Human rights mandate:** All NHRIs should be mandated with specific functions to both protect and promote human rights, such as those listed in the Paris Principles.
- 1.3 Encouraging ratification or accession to international human rights instruments:** The Sub-Committee interprets that the function of encouraging ratification or accession to international human rights instruments, set out in the Paris Principles, is a key function of a National Institution. The Sub-Committee therefore encourages the entrenchment of this function in the enabling legislation of the National Institution to ensure the best protection of human rights within that country.
- 1.4 Interaction with the International Human Rights System:** The Sub-Committee would like to highlight the importance for NHRIs to engage with the international human rights system, in particular the Human Rights Council and its mechanisms (Special Procedures Mandate Holders) and the United Nations Human Rights Treaty Bodies. This means generally NHRIs making an input to, participating in these human rights mechanisms and following up at the national level to the recommendations resulting from the international human rights system. In addition, NHRIs should also actively engage with the ICC and its Sub-Committee on Accreditation, Bureau as well as regional coordinating bodies of NHRIs.
- 1.5 Cooperation with other human rights institutions:** NHRIs should closely cooperate and share information with statutory institutions established also for the promotion and protection of human rights, for example at the state level or on thematic issues, as well as other organizations, such as NGOs, working in the field of human rights and should demonstrate that this occurs in their application to the ICC Sub-Committee.
- 1.6 Recommendations by NHRIs:** NHRI recommendations contained in annual, special or thematic human rights reports should normally be discussed within a reasonable amount of time, not to exceed six months, by the relevant government ministries as well as the competent parliamentary committees. These discussions should be held especially in order to determine the necessary follow up action, as appropriate in any given situation. NHRIs as part of their mandate to promote and protect human rights should ensure follow up action to recommendations contained in their reports.

2. Composition and guarantees of independence and pluralism

- 2.1 Ensuring pluralism:** The Sub-Committee notes there are diverse models of ensuring the requirement of pluralism set out in the Paris Principles. However, the Sub-Committee emphasizes the importance of National Institutions to maintain consistent relationships with civil society and notes that this will be taken into consideration in the assessment of accreditation applications. The Sub-Committee observes that there are different ways in which pluralism may be achieved through the composition of the National Institution, for example:
 - a) Members of the governing body represent different segments of society as referred to in the Paris Principles;
 - b) Pluralism through the appointment procedures of the governing body of the National Institution, for example, where diverse societal groups suggest or recommend candidates;

- c) Pluralism through procedures enabling effective cooperation with diverse societal groups, for example advisory committees, networks, consultations or public forums; or
- d) Pluralism through diverse staff representing the different societal groups within the society. The Sub-Committee further emphasizes that the principle of pluralism includes ensuring the meaningful participation of women in the National Institution.

2.2 Selection and appointment of the governing body: The Sub-Committee notes the critical importance of the selection and appointment process of the governing body in ensuring the pluralism and independence of the National Institution. In particular, the Sub-Committee emphasizes the following factors:

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

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

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

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

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

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

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

Adequate funding should, to a reasonable degree, ensure the gradual and progressive

realisation of the improvement of the organization's operations and the fulfillment of their mandate.

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

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

- 2.7 Staff of an NHRI:** As a principle, NHRIs should be empowered to appoint their own staff.
- 2.8 Full-time Members:** Members of the NHRIs should include full-time remunerated members to:
- a) Ensure the independence of the NHRI free from actual or perceived conflict of interests;
 - b) Ensure a stable mandate for the members; and
 - c) Ensure the ongoing and effective fulfillment of the mandate of the NHRI.
- 2.9 Guarantee of tenure for members of governing bodies:** Provisions for the dismissal of members of governing bodies in conformity with the Paris Principles should be included in the enabling laws for NHRIs.
- a) The dismissal or forced resignation of any member may result in a special review of the accreditation status of the NHRI;
 - b) Dismissal should be made in strict conformity with all the substantive and procedural requirements as prescribed by law;
 - c) Dismissal should not be allowed based on solely the discretion of appointing authorities.
- 2.10 Administrative regulation**
The classification of an NHRI as a public body has important implications for the regulation of its accountability, funding, and reporting arrangements. In cases where the administration and expenditure of public funds by an NHRI is regulated by the Government, such regulation must not compromise the NHRI's ability to perform its role independently and effectively. For this reason, it is important that the relationship between the Government and the NHRI be clearly defined.
- 3. Methods of operation**
- 4. Additional principles concerning the status of commissions with quasi-jurisdictional competence**
- 5. Additional issues**
- 5.1 NHRIs during the situation of a coup d'état or a state of emergency:** As a principle, the Sub-Committee expects that, in the situation of a coup d'état or a state of emergency, an NHRI will conduct itself with a heightened level of vigilance and independence in the exercise of their mandate.
- 5.2 Limitation of power of National Institutions due to national security:** The Sub-

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

5.3 Functioning of an NHRI in a volatile context: The Sub-Committee acknowledges that the context in which an NHRI operates may be so volatile that the NHRI cannot reasonably be expected to be in full conformity with all the provisions of the Paris Principles. When formulating its recommendation on the accreditation status in such cases, the Sub-Committee will give due consideration to factors such as: political instability; conflict or unrest; lack of state infrastructure, including excessive dependency on donor funding; and the NHRI's execution of its mandate in practice.

6. Procedural issues

6.1 Application processes: With the growing interest in establishing National Institutions, and the introduction of the five-yearly re-accreditation process, the volume of applications to be considered by the Sub-Committee has increased dramatically. In the interest of ensuring an efficient and effective accreditation process, the Sub-Committee emphasises the following requirements:

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

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

- a) In the event that an institution seeks a deferral of consideration of its re-accreditation application, a decision to grant the deferral can be taken only if written justifications for the deferral have been provided and these are, in the view of the ICC Chairperson, compelling and exceptional;
- b) Re-accreditation applications may be deferred for a maximum of one year, after this time the status of the NHRI will lapse; and

- c) For NHRIs whose re-accreditation applications are received after the due date or who have failed to submit their applications, their accreditation status will be suspended. This suspension can be in place for up to one year during which time the NHRI may submit its application for re-accreditation. If the application is not submitted during this time, the accreditation status will lapse.

6.3 NHRI's under review: Pursuant to Article 16 of the ICC Statute*, the ICC Chair or the Sub-Committee may initiate a review of a NHRI's accreditation status if it appears that the circumstances of that NHRI may have changed in any way which affects its compliance with the Paris Principles. Such a review is triggered by an exceptional set of circumstances considered to be temporary in nature. As a consequence, the regular re-accreditation process will be deferred until the review is completed.

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

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

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

6.5 Submission of information: Submissions will only be accepted if they are in paper or electronic format. The Statement of Compliance with the Paris Principles is the core component of the application. Original materials should be submitted to support or substantiate assertions made in this Statement so that the assertions can be validated and confirmed by the Sub-Committee. No assertion will be accepted without material to support it. Further, where an application follows a previous recommendation of the Sub-Committee, the application should directly address the comments made and should not be submitted unless all concerns can be addressed.

6.6 More than one national institution in a State: The Sub-Committee acknowledges and encourages the trend towards a strong national human rights protection system in a State by having one consolidated and comprehensive national human rights institution. In very exceptional circumstances, should more than one national institution seek accreditation by the ICC, it should be noted that Article 39 of the ICC Statute³ provides that the State shall have one speaking right, one voting right and, if elected, only one ICC Bureau member.

In those circumstances the conditions precedent for consideration of the application by the Sub-Committee are the following:

* Formerly article 3(g) of the ICC Rules of Procedure.

- a) Written consent of the State Government (which itself must be a member of the United Nations).
- b) Written agreement between all concerned national human rights institutions on the rights and duties as an ICC member including the exercise of the one voting and the one speaking right. This agreement shall also include arrangements for participation in the international human rights system, including the Human Rights Council and the Treaty Bodies.

The Sub-Committee stresses the above requirements are mandatory for the application to be considered.

- 6.7 NHRI annual report:** The Sub-Committee finds it difficult to review the status of an NHRI in the absence of a current annual report, that is, a report dated not earlier than one year before the time it is scheduled to undergo review by the Sub-Committee. The Sub-Committee stresses the importance for an NHRI to prepare and publicize an annual report on its national situation with regard to human rights in general, and on more specific matters. This report should include an account of the activities undertaken by the NHRI to further its mandate during that year and should state its opinions, recommendations and proposals to address any human rights issues of concern.

*Adopted by International Coordinating Committee of National Human Rights Institutions for the Promotion and Protection of Human Rights (ICC) by email after the SCA meeting of March 2009.
Geneva, November 2009.*

Annex V

**COMPILATION OF THE
RULES AND WORKING METHODS OF THE SCA**

1. Excerpt from the ICC Statute relevant to the accreditation process.....	pages 1-4
2. Rules of Procedure for the ICC Sub-Committee on Accreditation (SCA)	pages 5-7
3. SCA General Observations.....	pages 8-12
4. SCA Working Methods (SCA reports: October 2007 – March 2009)	page 13
5. Guidelines for Accreditation Applications.....	pages 14-18
6. Template of the Statement of Compliance.....	pages 19-31

1. [Excerpt from the ICC Statute relevant to the accreditation process](#)

Art 1.1 Sub-Committee on Accreditation means the sub-committee established under the former Rules of Procedure and referred to as the Accreditation Subcommittee of the International Coordinating Committee of National Institutions in United Nations Commission on Human Rights resolution 2005/74 as the authority to accredit NHRIs, under the auspices of the OHCHR, and whose mandate is given to it under and in accordance with the Rules of Procedure for the ICC Sub-Committee on Accreditation;

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Art 7 Functions

The functions of the ICC are:

2. To promote the establishment and strengthening of NHRIs in conformity with the Paris Principles, including such activities as:

- Accreditation of new members;
- Periodic renewal of accreditation;
- Special review of accreditation;
- Assistance of NHRIs under threat;
- Encouraging the provision of technical assistance;
- Fostering and promoting education and training opportunities to develop and reinforce the capacities of NHRIs.

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Art 10 Application for Accreditation Process

Any NHRI seeking accreditation under the Paris Principles shall apply to the Chairperson of the ICC. Through the ICC Secretariat, that NHRI shall supply the following in support of its application:

- a copy of the legislation or other instrument by which it is established and

empowered in its official or published format;

- an outline of its organizational structure including staff complement and annual budget;
- a copy of its most recent annual report or equivalent document in its official or published format;
- 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 Bureau may determine the form in which this statement is to be provided.

The application shall be decided pursuant to Articles 11 and 12 of this Statute.

Art 11.1 All applications for accreditation under the Paris Principles, shall be decided under the auspices of, and in cooperation with, OHCHR by the ICC Bureau after considering a report from the Sub-Committee on Accreditation on the basis of written evidence submitted.

Art 11.2 In coming to a decision, the ICC Bureau and the Sub-Committee shall adopt processes that facilitate dialogue and exchange of information between it and the applicant NHRI as deemed necessary to come to a fair and just decision.

Art 12 Where the Sub-Committee on Accreditation comes to an accreditation recommendation, it shall forward that recommendation to the ICC Bureau whose decision is final subject to the following process:

- The recommendation of the Sub-Committee shall first be forwarded to the applicant;
- An applicant can challenge a recommendation by submitting a written challenge to the ICC Chairperson, through the ICC Secretariat, within twenty eight (28) days of receipt.
- Thereafter the recommendation will be forwarded to the members of the ICC Bureau for decision. If a challenge has been received from the applicant, the challenge together with all relevant material received in connection with both the application and the challenge will also be forwarded to the members of the ICC Bureau;
- Any member of the ICC Bureau who disagrees with the recommendation shall, within twenty (20) days of its receipt, notify the Chair of the Sub-Committee and the ICC Secretariat. The ICC Secretariat will promptly notify all ICC Bureau members of the objection raised and will provide all necessary information to clarify that objection. If within twenty (20) days of receipt of this information at least four members of the ICC Bureau coming from not less than two regional groups notify the ICC Secretariat that they hold a similar objection, the recommendation shall be referred to the next ICC Bureau meeting for decision;
- If at least four members coming from two or more regional groups do not raise objection to the recommendation within twenty (20) days of its receipt, the recommendation shall be deemed to be approved by the ICC Bureau;
- The decision of the ICC Bureau on accreditation is final.

Art 13 Should the ICC Bureau decide to decline an application for accreditation of any NHRI by reason of its failure to comply with the Paris Principles, the ICC Bureau or its

delegate may consult further with that institution concerning measures to address its compliance issues.

Art 14 Any NHRI whose application for accreditation has been declined may reapply for accreditation, according to the guidelines under Article 10, at any time. Such an application may be considered at the next meeting of the Sub Committee on Accreditation.

Art 15 Periodic Re-accreditation

All NHRIs that hold an 'A' status are subject to re-accreditation on a five year cyclical basis. Article 10 applies to NHRIs undergoing re-accreditation. In particular reference to an application for accreditation means both the initial application and the application for re-accreditation.

Art Review of Accreditation Process

16.1

Where the circumstances of any NHRI change in any way which may affect its compliance with the Paris Principles, that NHRI shall notify the Chairperson of those changes and the Chairperson shall place the matter before the Sub-Committee on Accreditation for review of that NHRI's accreditation status.

Art 16.2

Where, in the opinion of the Chairperson of the ICC or of any member of the Sub-Committee on Accreditation, it appears that the circumstances of any NHRI that has been accredited with an 'A' status under the former Rules of Procedure 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 NHRI's accreditation status.

Art 16.3

Any review of the accreditation classification of a NHRI must be finalized within eighteen (18) months.

Art 17

On any review the Chairperson and Sub-Committee on Accreditation shall have all the powers and responsibilities as in an application under Article 10.

Art 18 Alteration of Accreditation Classification

Any decision that would serve to remove accredited 'A' status from an applicant can only be taken after the applicant is informed of this intention and is given the opportunity to provide in writing, within one (1) year of receipt of such notice, the written evidence deemed necessary to establish its continued conformity to the Paris Principles.

Art 19

An accreditation classification held by a NHRI may be suspended if the NHRI fails to submit its application for re-accreditation or fails to do so within the prescribed time without justification.

Art 20

An accreditation classification may lapse if a NHRI fails to submit an application for re-accreditation within one (1) year of being suspended for failure to reapply, or if a NHRI under review under Article 16 of this Statute fails to provide sufficient documentation, within eighteen (18) months of being placed under review, to satisfy the body determining membership under this Statute that it remains in conformity with the Paris Principles.

Art 21 NHRIs whose accreditation has been suspended remain suspended until the body determining their compliance with the Paris Principles under this Statute comes to a determination of their accreditation status or until their accreditation lapses.

Art 22 NHRIs whose accreditation status has lapsed or been revoked may regain accreditation only by re-applying for accreditation as provided for in Article 10 of this Statute.

Art 23 In the event that accreditation lapses or is revoked or suspended, all rights and privileges conferred on that NHRI through accreditation immediately cease. In the event that a NHRI is under review, it shall retain the accreditation 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.

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Art 46 Powers of the ICC Bureau

The ICC Bureau is empowered to act generally in the name of the ICC and to carry out the purpose and functions of the ICC. Without limiting the generality of the powers of management the ICC Bureau is empowered to:

- decide applications for accreditation after considering a recommendation from the Sub-Committee on Accreditation;
- (...)
- collaborate and work with the OHCHR and its NIU, and in particular to work with the NIU in connection with the ICC accreditation process, annual meetings of the ICC, meetings of the ICC Bureau and international conferences of NHRIs. In addition, the NIU will facilitate and coordinate the participation of NHRIs in the Human Rights Council, its mechanisms, and the United Nations human rights treaty bodies;
- use and accept the services of the NIU as the Secretariat for the ICC, the ICC Bureau and its Sub-Committee on Accreditation;
- (...)
- delegate any function to a nominated person, standing committee or subcommittee of persons or members;
- co-ordinate and arrange conferences, meetings, standing committees and sub-committees, and other activities;
- (...)
- adopt, amend or revoke rules of procedure in relation to the working methods of the ICC Bureau and its sub-committees to regulate or clarify any matter contemplated by this Statute. Every decision to adopt, amend or revoke a rule shall as soon as is practicable be circulated to all members of the ICC and posted on the nhri.net website.

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Art 50.1 Conduct of ICC Bureau Business

English, French, and Spanish shall be the working languages of the ICC Bureau. As a result, documents from the ICC should be available in these languages.

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Art 51 Further Procedure

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

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Art 59 SECTION 16: TRANSITIONAL PROVISION

The Sub-Committee on Accreditation and the Rules of Procedure for the ICC Sub-Committee on Accreditation are by this Statute continued in existence, and shall remain in existence until amended or revoked by the ICC Bureau. The Sub-Committee on Accreditation is hereby constituted a sub-committee of the ICC Bureau. The Rules of Procedure for the ICC Sub-Committee on Accreditation are incorporated into this Statute as **Annex I**.

***EXECUTED BY:** Ms. Jennifer Lynch, Q.C. 30 July 2008/ Amended at a General Meeting held at Nairobi, 21st October 2008 /Amended at a General Meeting held at Geneva, 24th March 2009.*

2. [Rules of Procedure for the ICC Sub-Committee on Accreditation*](#)

1. **Mandate**

In accordance with the Statute of the Association International Coordination Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) (Article 1.1), the Sub-Committee on Accreditation has the mandate to review and analyse accreditation applications forwarded by the ICC Chairperson and to make recommendations to the ICC 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 NHRI accredited 'Status A' for each of the four (4) regional groups as established by the ICC Statute (Section 7), namely Africa, Americas, Asia-Pacific, and Europe.

2.2. Members are appointed by regional groups 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 NHRI in that region.

2.4 The Office of the United Nations High Commissioner for Human Rights (OHCHR) shall be a permanent observer to the Committee and in its capacity as Secretariat of the ICC, support the Sub-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 group representative to the Sub-Committee on Accreditation shall facilitate the application process for NHRIs in the region.

3.2. The regional grouping representative shall supply NHRIs 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 Statute (Section 5), any NHRI 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. Subject to rule 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 deadline 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. Any civil society organization wishing to provide relevant information pertaining to any accreditation matter before the Sub-Committee shall provide such information in writing to the ICC Secretariat at least four (4) months prior to the meeting of the Sub-Committee.

3.7. The ICC Chairperson, with support from the ICC Secretariat, will ensure that copies of the applications and supporting documentation are provided to each member of the Sub-Committee on Accreditation.

3.8. The ICC Chairperson, with support from the ICC Secretariat, 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 General Meeting of the ICC in order to consider any accreditation matter under Section 5 of the Statute.

4.2. The Chairperson of the Sub-Committee on Accreditation may invite any person or institution to participate in the work of the Sub-Committee as an observer.

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

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 Bureau for determination and guidance. An ultimate decision as to accreditation can only be taken once the ICC Bureau provides that decision or guidance.

4.5. The Sub-Committee may, pursuant to Article 11.2 of the ICC Statute, 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 Article 11.2, 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 Bureau

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 Statute, the different classifications for accreditation used by the Sub-Committee are:

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

6. Report and Recommendations

6.1 Pursuant to Article 12 of the ICC Statute, where the Sub-Committee on Accreditation comes to an accreditation recommendation, it shall forward that recommendation to the ICC Bureau whose final decision is subject to the following process:

- (vii) The recommendation of the Sub-Committee shall first be forwarded to the applicant;
- (viii) An applicant can challenge a recommendation by submitting a written challenge to the ICC Chairperson, through the ICC Secretariat, within twenty eight (28) days of receipt;
- (ix) Thereafter the recommendation will be forwarded to the members of the ICC Bureau for decision. If a challenge has been received from the applicant, the challenge together with all relevant material received in connection with both the application and the challenge will also be forwarded to the members of the ICC Bureau;
- (x) Any member of the ICC Bureau who disagrees with the recommendation shall, within twenty (20) days of its receipt, notify the Chair of the Sub-Committee and the ICC Secretariat. The ICC Secretariat will promptly notify all ICC Bureau members of the objection raised and will provide all necessary information to clarify that objection. If within twenty (20) days of receipt of this information at least four members of the ICC Bureau coming from not less than two regional groups notify the ICC Secretariat that they hold a similar objection, the recommendation shall be referred to the next ICC Bureau meeting for decision;
- (xi) If at least four members of the ICC Bureau coming from not less than two regional groups do not raise objection to the recommendation within twenty (20) days of its receipt, the recommendation shall be deemed to be approved by the ICC Bureau;
- (xii) The decision of the ICC Bureau on accreditation is final.

6.2 General Observations are to be developed by the Sub-Committee and approved by the ICC Bureau.

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

- (d) Instruct Institutions when they are developing their own processes and mechanisms, to ensure Paris Principles compliance;
- (e) Persuade domestic governments to address or remedy issues relating to an Institution's compliance with the standards articulated in the General Observations;

- (f) Guide the Sub-Committee on Accreditation in its determination of new accreditation applications, reaccreditation applications or special reviews:
- (iii) 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.
- (iv) 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. Amended by the members of the ICC at its 20th session, held on 15 April 2008, Geneva, Switzerland.*

3. SCA General Observations (as updated March 2009)

1. Competence and responsibilities

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

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

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

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

1.5 Cooperation with other human rights institutions: NHRIs should closely cooperate and share information with statutory institutions established also for the promotion and protection of human rights, for example at the state level or on thematic issues, as well as other organizations, such as NGOs, working in the field of human rights and should demonstrate that this occurs in their application to the ICC Sub-Committee.

1.6 Recommendations by NHRIs

NHRI recommendations contained in annual, special or thematic human rights reports should normally be discussed within a reasonable amount of time, not to exceed six months, by the relevant government ministries as well as the competent parliamentary committees. These discussions should be held especially in order to determine the necessary follow up action, as appropriate in any given situation. NHRIs as part of their mandate to promote and protect human rights should ensure follow up action to recommendations contained in their reports.

2. Composition and guarantees of independence and pluralism

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

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

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

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

2.2 Selection and appointment of the governing body: The Sub-Committee notes the critical importance of the selection and appointment process of the governing body in ensuring the pluralism and independence of the National Institution. In particular, the Sub-Committee emphasizes the following factors:

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

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

2.4 Staffing by secondment:

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

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

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

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

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

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

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

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

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

2.8 Full-time Members:

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

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

2.9 Guarantee of tenure for members of governing bodies

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

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

2.10 Administrative regulation

The classification of an NHRI as a public body has important implications for the regulation of its accountability, funding, and reporting arrangements.

In cases where the administration and expenditure of public funds by an NHRI is regulated by the Government, such regulation must not compromise the NHRI's ability to perform its role independently and effectively. For this reason, it is important that the relationship between the Government and the NHRI be clearly defined.

3. Methods of operation

4. Additional principles concerning the status of commissions with quasi-judicial competence

5. Additional issues

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

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

5.3 Functioning of an NHRI in a volatile context: The Sub-Committee acknowledges that the context in which an NHRI operates may be so volatile that the NHRI cannot reasonably be expected to be in full conformity with all the provisions of the Paris Principles. When formulating its recommendation on the accreditation status in such cases, the Sub-Committee will give due consideration to factors such as: political instability; conflict or unrest; lack of state infrastructure, including excessive dependency on donor funding; and the NHRI's execution of its mandate in practice.

6. Procedural issues

6.1 Application processes: With the growing interest in establishing National Institutions, and the introduction of the five-yearly re-accreditation process, the volume of applications to be considered by the Sub-Committee has increased dramatically. In the interest of ensuring an efficient and effective accreditation process, the Sub-Committee emphasizes the following requirements:

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

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

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

6.3 NHRI's under review: Pursuant to Article 16 of the ICC Statute¹⁸, the ICC Chair or the Sub-Committee may initiate a review of a NHRI's accreditation status if it appears that the circumstances of that NHRI may have changed in any way which affects its compliance with the Paris Principles. Such a review is triggered by an exceptional set of circumstances considered to be temporary in nature. As a consequence, the regular re-accreditation process will be deferred until the review is completed.

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

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

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

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

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

6.6 More than one national institution in a State: The Sub-Committee acknowledges and encourages the trend towards a strong national human rights protection system in a State by having one consolidated and comprehensive national human rights institution.

In very exceptional circumstances, should more than one national institution seek accreditation by the ICC, it should be noted that Article 39 of the ICC Statute¹⁹ provides that the State shall have one speaking right, one voting right and, if elected, only one ICC Bureau member.

In those circumstances the conditions precedent for consideration of the application by the Sub-Committee are the following:

- 1) Written consent of the State Government (which itself must be a member of the United Nations);
- 2) Written agreement between all concerned national human rights institutions on the rights and duties as an ICC member including the exercise of the one voting and the one speaking right. This agreement shall also include arrangements for participation in the international human rights system, including the Human Rights Council and the Treaty Bodies.

The Sub-Committee stresses the above requirements are mandatory for the application to be

¹⁸ Formerly article 3(g) of the ICC Rules of Procedure

¹⁹ Formerly Rule 3 (b) of the ICC Rules of procedure 6

considered.

6.7 NHRI annual report

The Sub-Committee finds it difficult to review the status of an NHRI in the absence of a current annual report, that is, a report dated not earlier than one year before the time it is scheduled to undergo review by the Sub-Committee. The Sub-Committee stresses the importance for an NHRI to prepare and publicize an annual report on its national situation with regard to human rights in general, and on more specific matters. This report should include an account of the activities undertaken by the NHRI to further its mandate during that year and should state its opinions, recommendations and proposals to address any human rights issues of concern.

**Adopted by the International Coordinating Committee of National Human Rights Institutions for the Promotion and Protection of Human Rights (ICC) by email after the SCA meeting of March 2009.*

4. SCA Working Methods (SCA reports: October 2007 – March 2009)

At its twice-yearly sessions, the Sub-Committee continued to develop its working methods in the ongoing effort to advance the principles of rigour, transparency, and fairness in the accreditation process.

ICC Secretariat Summaries

1.1 The ICC Secretariat will, on behalf of the Sub-Committee, share the summaries prepared by the Secretariat with each NHRI before the consideration of its application and to give that NHRI one week to comment on the summary. All comments received, together with the summaries, are to be then sent to the members of the Sub-Committee. Once the recommendations of the Sub-Committee are adopted by the ICC according to the procedures, the summaries and the comments will be posted on the NHRI Forum (www.nhri.net).²⁰

1.2 The summaries are prepared only in English, due to current financial constraints.²¹

Civil Society Submissions

1.3 The Sub-Committee also considers information received from civil society. It shares that information with the concerned NHRIs and considers their responses.²²

1.4 The Sub-Committee will consider only that information from civil society that is received by the ICC Secretariat at least four (4) months prior to the next session of the Sub-Committee.²³

Conduct of Session

1.5 If further clarification is requested during its deliberations, the SCA will make conference calls with relevant NHRIs. Prior to the meeting all concerned NHRIs will be informed about this new way of seeking clarifications and are requested to provide a name and phone number in each NHRI in case the Sub-Committee needs to contact the Institution.²⁴

1.6 OHCHR Desk Officers and, as appropriate, field offices are made available to the Sub-Committee members to introduce individual NHRIs considered by the Sub-Committee and provide further information, as needed.²⁵

²⁰ SCA Report, April 2008.

²¹ SCA Report, April 2008.

²² SCA Report, April 2008.

²³ SCA Report, November 2008.

²⁴ SCA Report, October 2007; Section 4.5. Rules of Procedure.

²⁵ SCA Report, October 2007: Section 4.5. Rules of Procedure.

1.7 The Sub-Committee encourages the participation of all NHRI regional coordinating committees to attend the sessions as observers.²⁶

Re-Accreditation of B status institutions

1.8 The Sub-Committee recommends that all NHRIs that hold B status be subject to re-accreditation on a 5 year cyclical basis.²⁷

NHRIs under Review

1.9 When the Sub-Committee is to review particular issues within a specified timeframe, the outcome of the review may affect the accreditation status.²⁸

5. Guidelines for Accreditation Applications (as updated June 2009)

1. Background

The United Nations High Commissioner for Human Rights has emphasised that National Human Rights Institutions (NHRIs) around the globe are essential partners in protecting and promoting human rights at the national and regional levels. In order to preserve this international recognition and trust, NHRIs must continue to be credible, legitimate, relevant and effective. This can be achieved by ensuring that the Paris Principles, the principal source of normative standards for NHRIs, guide the work of NHRIs. OHCHR and the International Coordinating Committee of NHRIs (ICC) work closely to ensure that NHRIs are established and strengthened in line with the Paris Principles.

The ICC is an international association of NHRIs which promotes and strengthens NHRIs to be in accordance with the Paris Principles and provides leadership in the promotion and protection of human rights (ICC Statute, Art 5)²⁹. NHRIs may become a voting member of the ICC when they are assessed in compliance with the Paris Principles³⁰.

Reviewing NHRIs' compliance with the Paris Principles, through its accreditation and reaccreditation process (i.e. through the work of its Sub-committee on Accreditation), is one of the main functions of the ICC. In accordance with the Statute of the ICC, the Sub-Committee on Accreditation (the Sub-committee) has the mandate to consider and review applications for accreditation, re-accreditation and accreditation reviews of NHRIs on the basis of written evidence submitted³¹. The ICC Bureau is vested with the power to decide applications for accreditation after considering the recommendation from the Sub-Committee on Accreditation (ICC Statute, Art 46).

The accreditation process has progressively become more rigorous and transparent, and now considers the effectiveness of NHRIs and their engagement with the international human rights system. The Sub-Committee assesses a NHRI's compliance with the Paris Principles in law and in

²⁶ SCA Report, November 2008.

²⁷ SCA Report, March 2009.

²⁸ SCA Report, October 2007.

²⁹ Adopted on 30 July 2008, as amended on 21 October 2008, and further amended on 24 March 2009.

³⁰ Benefits of membership (i.e. full compliance with the Paris Principles, 'A status' accreditation) for NHRIs are a recognised standing in the international community (e.g. right to seat and speak in the Human Rights Council); a strengthened voice of NHRIs internationally; possibility to play an active role in ICC decision making and policy development; access to ICC services (e.g. fora to exchange good practices, develop knowledge, share expertise and network); access to cooperation on issues of common concern.

³¹ ICC Statute, Art 1.1 defines the Sub-committee on Accreditation as 'the sub-committee established under the former Rules of Procedure and referred to as the Accreditation Subcommittee of the ICC in Human Rights Council resolution 2005/74 as the authority to accredit NHRIs, under the auspices of the OHCHR, and whose mandate is given to it under and in accordance with the Rules of Procedure for the ICC Sub-Committee on Accreditation'...

practice. All applications for accreditation under the Paris Principles are decided under the auspices of, and in cooperation with, OHCHR.

The following sections explain what the accreditation process is and how it works, and includes recent developments as approved by the ICC.

2. How to make an application

New applicants seeking accreditation under the Paris Principles should apply to the Chairperson of the ICC, through the National Institutions Unit of the OHCHR, in its capacity as ICC Secretariat (ICC Statute, Art 10). NHRIs due to be reviewed under the established re-accreditation process will be contacted by OHCHR in due time indicating a deadline for submission of a complete application for re-accreditation.

In accordance with Art 10 of the ICC Statute, applications for accreditation or reaccreditation must supply the following supporting documents:

- a copy of the legislation or other instrument by which it is established and empowered in its official or published format (e.g. statute, and/or constitutional provision, and/or presidential decree);
- an outline of its organizational structure including details of staff and annual budget;
- a copy of its most recent annual report or equivalent document in its official or published format;
- 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 (following the template provided by OHCHR).

Where possible, applicants should provide documentation in its official or published form (for example, published laws and published annual reports) and not secondary analytical documents. For documents that are translated by the applicant NHRI for the Sub-Committee, the NHRI is requested to include the official letterhead of the institution with its logo on the translated document.

All the above mentioned documents must be received by OHCHR (in its capacity as the ICC Secretariat) four (4) months before the following Sub-Committee on Accreditation session³². NHRIs can submit information in one of the working languages of the ICC – English, French or Spanish but shall not be translated by the Secretariat³³.

Documentation should be submitted in both hard copy and electronic format to the ICC Secretariat at OHCHR at the following address: National Institutions Unit, OHCHR, CH-1211 Geneva 10, Switzerland, and by email to the National Institutions Unit (gmagazzeni@ohchr.org; falbanese@ohchr.org; emonsalve@ohchr.org).

3. Deadlines for submission of an application

Deadlines for complete submission of documents must be absolutely adhered to. The Sub-committee is very strict on supporting the Secretariat in this regard. At its 18th Session in 2006, the ICC agreed that late submission will not be considered until a subsequent meeting of the Sub-Committee. For NHRIs seeking re-accreditation, such a delay may result in a suspension of the NHRI's accreditation status³⁴. At its 20th session in 2008 the ICC agreed that the deadline for the Secretariat to receive a complete application for each applicant NHRI is four (4) months before the scheduled Sub-committee session.

³² Sub-Committee on Accreditation Rules of Procedure, Rule 3.4

³³ According to the Statute of the ICC (article 42), the working languages of the ICC are English, French and Spanish.

³⁴ Sub-Committee on Accreditation Rules of Procedure, Rule 3.5

4. The application process

a) Before the Sub-Committee meeting

In addition to an initial application, the Sub-Committee may review an NHRI's compliance with the Paris Principles in the following circumstances. First, under Art 15 of the ICC Statute, NHRIs that hold an "A" Status are periodically reviewed every 5 years. Additionally, following the March 2009 session of the Sub-Committee on Accreditation, the ICC Bureau agreed that NHRIs holding "B" Status would also be subject to the 5-year review process.³⁵ Finally, under Art 16.2 of the ICC Statute, the Chair of the ICC or a member of the Sub-Committee on Accreditation may initiate an accreditation review of a particular NHRI when he/she perceives a change in the circumstances of any "A Status" NHRI which may affect its compliance with the Paris Principles.³⁶

As noted above in section 2, applications and supporting documents are received and processed by the National Institutions Unit of the United Nations Office of the High Commissioner for Human Rights (OHCHR) in its capacity as the ICC Secretariat.

Civil society organizations may also provide relevant information to OHCHR pertaining to any accreditation matter before the Sub-Committee. According to Rule 3.6 of the Sub-Committee's Rules of Procedure, those wishing to do so must provide such information in writing to OHCHR at least four (4) months prior to the meeting of the Sub-Committee.

OHCHR shares the complete file of the applicant NHRI with the four Sub-Committee members. It also reviews the supporting documentation provided and prepares a summary, which follows the structure of the statement of compliance provided by the NHRI. The summary is also shared with relevant OHCHR desk officers and United Nations field presences. During this process, OHCHR may contact the applicant NHRI to seek further information or clarification on issues arising. The summary is shared with the applicant NHRI to check for factual errors, one week prior to its distribution to the Sub-Committee members.

b) During the Sub-Committee meeting

The procedures adopted by the Sub-committee aim to facilitate dialogue and exchange of information between it and the applicant NHRI as deemed necessary to come to a fair and just decision. The summary and the statement of compliance are the basis for the discussions during the Sub-Committee meetings. The complete documentation file received is also available to Sub-Committee members during the meeting. During these deliberations, OHCHR desk officers are invited to participate and provide their views. The Sub-Committee requests contact persons within applicant NHRIs to be available by phone during the review as it may also call them to request additional information needed to evaluate the NHRI. Applicant NHRIs are not present during the meetings of the Sub-Committee.

The course of the meeting, the Sub-Committee agrees on a recommended accreditation status for each applicant NHRI. In accordance with Rule 5 of the ICC Sub-Committee on Accreditation Rules of Procedure, the different classifications for accreditation used by the Sub-Committee are:

A: Voting Member - Fully in compliance with each of the Paris Principles;

³⁵ See, Report and Recommendations of the Session of the Sub-Committee on Accreditation (Geneva, 26-30 March 2009), at paragraph 2.6

³⁶ Under Art 16.1 NHRIs are obliged to inform the Chairperson of any changes that may affect its compliance with the Paris Principles

B: Non-Voting Member - Not fully in compliance with each of the Paris Principles or insufficient information provided to make a determination;

C: No Status – Not in compliance with the Paris Principles.

c) After the Sub-Committee meeting

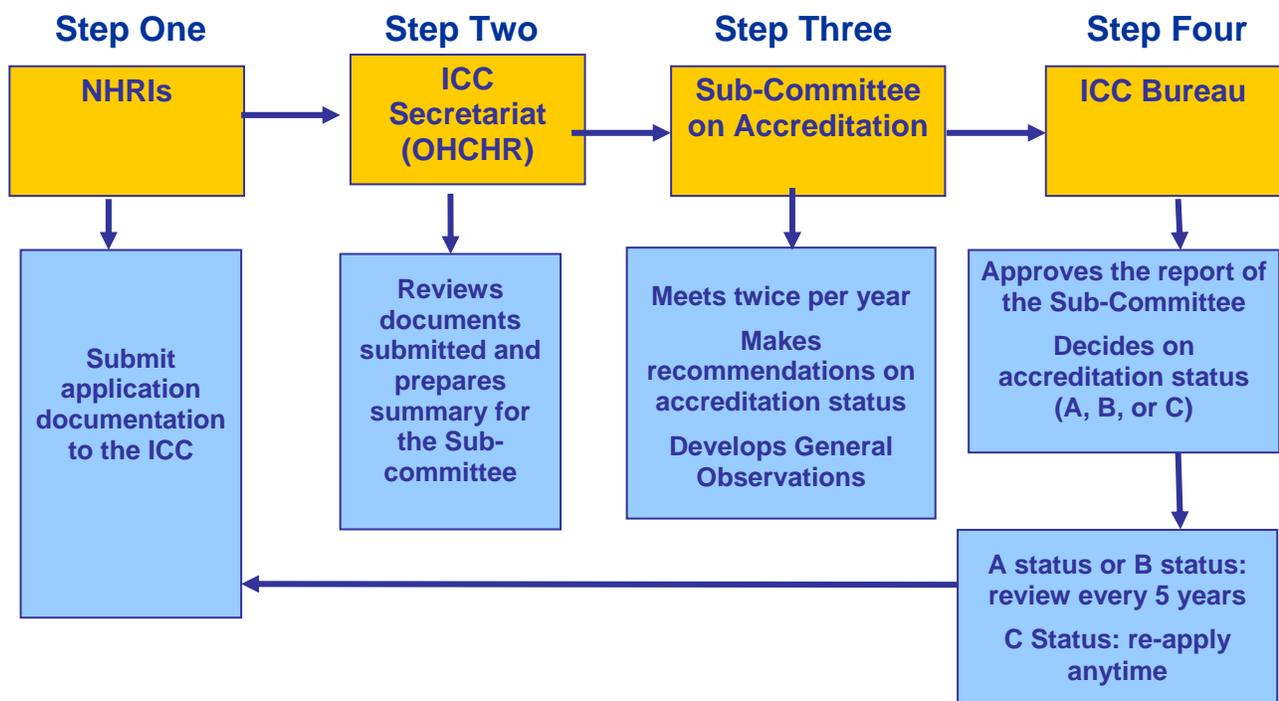
The process for approving the Sub-Committee’s recommendations is set out in Art 12 of the ICC Statute. After the evaluation of an NHRI application, OHCHR sends the recommendation of the Sub-Committee first to relevant applicant NHRIs. These NHRIs have 28 days to react to the recommendation, if they so wish. Immediately after that 28-day period, OHCHR sends the Report and Recommendations of the Sub-Committee (and any response from the applicant NHRI) to the 16 members of the ICC Bureau. The Bureau members have twenty (20) days to approve or object to the recommendations.

Any member of the ICC Bureau who disagrees with the recommendation must notify the Chair of the Sub-Committee and the ICC Secretariat within these 20 days. The ICC Secretariat then notifies all other Bureau members and provides all information to clarify that objection. If at least four members of the ICC Bureau (coming from not less than two regional groups) notify the ICC Secretariat that they hold a similar objection within twenty (20) days of receipt of this information, the recommendation shall be referred to the next ICC Bureau meeting for decision. If the required number of members does not raise any objection to the recommendation within the 20 day period, it will be deemed to be approved by the ICC Bureau.

d) Approval of Recommendations

The decision of the ICC Bureau on accreditation, based on the Sub-Committee’s review, is final. Unapproved decisions are referred for consideration at the next ICC meeting.

e) Diagram of the accreditation and re-accreditation process



5. General Observations of the ICC Sub-Committee on Accreditation

As per the Sub-Committee’s Rules of Procedure, the General Observations, are interpretive tools of the Paris Principles, may be used to:

- d) Instruct institutions when they are developing their own processes and mechanisms, to ensure Paris Principles compliance;
- e) Persuade domestic governments to address or remedy issues relating to an institution’s compliance with the standards articulated in the General Observations;
- f) Guide the Sub-Committee on Accreditation in its determination of new accreditation applications, re-accreditation 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”.

A compilation of the General Observations adopted by the ICC is attached in annex 1.

Applicant NHRIs are also encouraged to refer to the latest ICC Sub-Committee reports available in www.nhri.net to find that latest General Observations developed by the Sub-Committee and pending adoption by the ICC.

6. Template of the Statement of Compliance

The following document should be completed by the applicant NHRI as part of the accreditation application. It should be completed using references to primary sources (e.g. constitution, law, decree, reports) in order to provide the Sub-Committee with essential background information on the NHRI. It is essential that the NHRI substantiate each statement made by reference to its enabling instrument(s) or official reports. Applicants are kindly requested to clearly indicate articles and sections of primary sources they refer to (i.e. article, paragraph, and page).

STATEMENT OF COMPLIANCE WITH THE PARIS PRINCIPLES OF THE [NAME OF NHRI] - [Date] -

CHARACTER OF THE NHRI

1. ESTABLISHMENT

The Paris Principles state that an institution’s mandate shall be clearly set forth in a constitutional or legislative text (...).

The ICC has adopted the following General Observation on the Establishment of NHRIs: “An NHRI must be established in a constitutional or legal text. Creation by an instrument of the Executive is not adequate to ensure permanency and independence”

Discuss the instruments that establish the NHRI. Please explain:

- When and by what enabling law the NHRI was established;
- The legal status is of the NHRI, i.e. whether it has been established by legislation or if it is entrenched in the Constitution;
- If there is any other mechanism that gives the NHRI its legitimacy;
- The geographic jurisdiction of the NHRI.

2. INDEPENDENCE

Independence is a fundamental pillar of the Paris Principles. All the provisions in the section “Composition and guarantees of independence and pluralism” aim to ensure independence through composition, representation, infrastructure, stable mandate of the NHRI.

*The ICC has adopted the following General Observation on the **administrative regulation** of NHRIs: “The classification of an NHRI as a public body has important implications for the regulation of its accountability, funding, and reporting arrangements. In cases where the administration and expenditure of public funds by an NHRI is regulated by the Government, such regulation must not compromise the NHRI’s ability to perform its role independently and effectively. For this reason, it is important that the relationship between the Government and the NHRI be clearly defined”.*

To preserve the independence of members, the ICC has strongly recommended that “provisions be included in national law to protect legal liability for actions undertaken in the official capacity of the NHRI”.

Discuss the mechanisms that guarantee the independence of the NHRI. Please explain:

- The nature of the Institution’s accountability (i.e. whether the NHRI is accountable to parliament, a ministry, government department, head of state, etc.);
- Whether or not the NHRI receives instruction from the government;
- By what means conflicts of interest are avoided;
- Whether or not members incur legal liability for actions taken in their official capacity.

3. COMPOSITION, APPOINTMENT PROCESS, TENURE

3.1 Composition

The Paris Principles state that “the composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:

- (a) Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;***
- (b) Trends in philosophical or religious thought;***
- (c) Universities and qualified experts;***
- (d) Parliament;***

(e) Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).

The ICC has adopted the following **General Observations on the composition and pluralism of NHRIs:**

- **Ensuring pluralism:** The Sub-Committee notes there are diverse models of ensuring the requirement of pluralism set out in the Paris Principles. However, the Sub-Committee emphasises the importance of National Institutions to maintain consistent relationships with civil society and notes that this will be taken into consideration in the assessment of accreditation applications. The Sub-Committee observes that there are different ways in which pluralism may be achieved through the composition of the National Institution, for example:

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

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

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

Discuss how your NHRI meets the requirement of pluralism. Please explain:

- Whether your founding law requires a diverse composition of members³⁷;
- Which authority/group may nominate candidates for membership;
- The composition of the NHRI's membership, i.e. what positions are created by the enacting law and what positions are currently filled and are in operation (Please include heads and deputy heads of the organization);
- How the groups mentioned at the letters a-e as above are represented;
- Representation of women;
- Representation of ethnic or minority groups (e.g. indigenous, religious minorities, etc);
- Representation of particular groups (e.g. people with a disability, etc);

3.2 Selection and appointment

The ICC has adopted the following **General Observations on selection and appointment:**

- **Selection and appointment of the governing body:** The Sub-Committee notes the critical importance of the selection and appointment process of the governing body in ensuring the pluralism and independence of the National Institution. In particular, the Sub-Committee emphasises the following factors:

1. A transparent process
2. Broad consultation throughout the selection and appointment process

³⁷ Members refers to those individuals that are appointed or elected under the NHRI's founding law (i.e. Chair, Commissioners, Ombudsmen, Deputy Ombudsmen) and with whom the NHRIs functions are vested.

3. *Advertising vacancies broadly*
4. *Maximising the number of potential candidates from a wide range of societal groups*
5. *Selecting members to serve in their own individual capacity rather than on behalf of the organization they represent.*

Discuss how members of the NHRI are selected and appointed. Please explain:

- The legal provisions (in your founding law or elsewhere) regarding the selection and appointment of members to the NHRI;
- The selection process and appointment procedure in practice (please indicate how publicity, transparency, broad consultation, openness to different groups of societies are enshrined in the enabling legislation and operate in practice);
- Whether and how these procedures ensure adequate representation of civil forces (e.g. civil society) involved in the promotion and protection of human rights
- Cooperation with the representatives of the groups mentioned above in 3.1;
- Membership criteria;

3.3. Tenure

The Paris Principles state that in order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.

*The ICC has adopted the following **General Observations on membership tenure**:*

- ***Full-time Members:*** *Members of the NHRIs should include full-time remunerated members to:*
 1. *Ensure the independence of the NHRI free from actual or perceived conflict of interests;*
 2. *Ensure a stable mandate for the members;*
 3. *Ensure the ongoing and effective fulfilment of the mandate of the NHRI.*
- ***Guarantee of tenure for members of governing bodies:*** *Provisions for the dismissal of members of governing bodies in conformity with the Paris Principles should be included in the enabling laws for NHRIs.*
 1. *The dismissal or forced resignation of any member may result in a special review of the accreditation status of the NHRI;*
 2. *Dismissal should be made in strict conformity with all the substantive and procedural requirements as prescribed by law;*
 3. *Dismissal should not be allowed based on solely the discretion of appointing authorities.*

Discuss how the tenure of the NHRIs' members is ensured. Please explain:

- The terms of office of members (and if it is specified in the founding law);
- Whether members are full and/or part-time;
- Whether the members receive adequate remuneration;
- Whether the members' terms are renewable;
- The grounds and procedures for dismissal and/or resignation of a member and how they operate in practice;
- If there is an advisory body in addition to the members, and if so, please set out the membership requirements of this body.

4. **ORGANIZATIONAL INFRASTRUCTURE**

4.1 **Infrastructure**

The Paris Principles state that the national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.

Discuss the NHRI's infrastructure.

Please explain:

- The organisational structure of the NHRI;
- How the NHRI's infrastructure (including staff and resources) is allocated;
- How the NHRI's infrastructure allows it to function according to its mandate;
- Evidence that the NHRI is adequately resourced and staffed.

Please provide:

- An organizational chart of the NHRI's structure.

4.2 **Staffing**

The Paris Principles state that the NHRIs should be able to have its own staff. The ICC has adopted the following General Observation on staffing:

- ***Staff of an NHRI:*** As a principle, NHRIs should be empowered to appoint their own staff.
- ***Staffing by secondment:*** In order to guarantee the independence of the NHRI, the Sub Committee notes, as a matter of good practice, the following:
 1. *Senior level posts should not be filled with secondees;*
 2. *The number of seconded should not exceed 25% and never be more than 50% of the total workforce of the NHRI.*

Discuss the NHRI's staffing. Please explain:

- How staff of the NHRI are hired;
- If there are any limitations on the NHRI's authority to hire staff;
- Which current positions (if any) are filled by secondees;
- What percentage of the staff (including senior position) is seconded;
- Whether and how the staff reflects the principle of pluralism.

Please provide:

- A list of the staff of the NHRI or, if provided in another document, refer to the organisational chart illustrating the staffing structure of the NHRI (please indicate gender distribution).

4.3 **Premises (accessibility)**

The Paris Principles state that the NHRIs should be able to have its own (...) premises and that, within the framework of its operation, the national institution shall (...) set up local or regional sections to assist it in discharging its functions.

Discuss the NHRI's premises. Please explain:

- The presentation of the main premises of your organization;
- Whether the NHRI has local or regional offices;
- If so, how local and regional offices communicate with the main office;
- How the public can access the NHRI's offices;
- Whether the NHRI's offices are accessible to people with disabilities;

Please also describe procedures and mechanisms of the NHRI to ensure accessibility to the broader population and in particular, to people who are exposed to human rights violations or non-fulfilment of their rights, i.e. women, ethnic, linguistic, religious or other minorities, non-nationals and persons with disability, as well as the poor.

4.4 Budget

The Paris Principles state that the national institution shall have an (...) adequate funding (...) and not be subject to financial control which might affect its independence.

*The ICC has adopted the following General Observation on **Adequate Funding**: Provision of adequate funding by the state should, as a minimum include:*

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

Adequate funding should, to a reasonable degree, ensure the gradual and progressive realization of the improvement of the organization's operations and the fulfillment of their mandate. Funding from external sources, such as from development partners, should not compose the core funding of the NHRI as it is the responsibility of the state to ensure the NHRI's minimum activity budget in order to allow it to operate towards fulfilling its mandate. Financial systems should be such that the NHRI has complete financial autonomy. This should be a separate budget line over which it has absolute management and control.

Discuss the NHRI's budget. Please explain:

- How the NHRI's budget is developed, submitted and approved (e.g. if it is drafted by the NHRI, presented directly to parliament or through a government ministry or other body, the influence of that body);
- Whether or not the NHRI has control over the management and expenditure of its allocated budget (i.e. if the NHRI is financially independent from the government in how its budget is spent).
- Whether -and what percentage of- the NHRI budget is donor funded.

Please provide:

- information relating to the budget of the NHRI, its accounts and financial records;

5. WORKING METHODS

Please indicate whether your organization has adopted internal regulations and/or an annual/strategic plan. Briefly describe its main elements.

5.1 Regular meetings

The Paris Principles state that within the framework of its operation, the national institution shall meet on a regular basis and whenever necessary in the presence of all its members after they have been duly convened.

Discuss how the meetings of the NHRI's members operate. Please explain:

- The frequency and composition of the NHRI meetings in practice (at the senior and staff level).

5.2 Working groups

The Paris Principles state that within the framework of its operation, the national institution shall establish working groups from among its members as necessary.

Discuss the NHRI's working groups (if any). Please explain:

- Whether the NHRI has established any working groups;
- If so, what are the mandate, composition and working methods of these groups.

GENERAL MANDATE

6. GENERAL COMPETENCE AND RESPONSIBILITIES

For each of the functions described in the following sections, please discuss:

- the relevant provisions in the NHRI's founding law,
- the powers the NHRI is vested with (e.g. if it can act on its own initiative), and
- concrete examples of how the NHRI fulfils the function in practice.

6.1 Mandate to promote and protect human rights

The Paris Principles state that a national institution shall be vested with competence to promote and protect human rights. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text (...). Within the framework of its operation, the national institution shall freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petition.

*The ICC has adopted the following General Observation on **Human rights mandate**: All NHRIs should be mandated with specific functions to both protect and promote human rights, such as those listed in the Paris Principles.*

Discuss the broad legal mandate of the NHRI. Please explain:

- How human rights are defined in the NHRI's founding law;
- Which rights the NHRI is mandated to address: e.g. civil, political, social, economic and cultural;
- If the institutions' mandate refers to any limitation in the mandate or jurisdiction (e.g. rights or areas of the countries that are excluded);
- Broadly, how the NHRI is able to exercise its mandate in practice.

6.2 Advisory Functions

The Paris Principles state that a national institution shall, inter alia, have the responsibility to submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights (...).

Discuss the legal provisions for this function and how the NHRI carries out this responsibility in relation to the following functions:

6.2.1 Functions regarding national legislation

The Paris Principles state that a national institution shall have the responsibility to promote and ensure the harmonization of national legislation regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation.

It is also stated that a NHRI shall have responsibilities in relation to any of the following areas:

(i) Any legislative or administrative provisions, as well as provisions relating to judicial organizations, intended to preserve and extend the protection of human rights; in that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights; it shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures.

Discuss how the NHRI carries out this function. Please explain:

- The legal provisions that vest the NHRI with this function;
- How the NHRI carries out this function in practice;
- What recommendations the NHRI has made on legislative and administrative provisions; amendment of legislation and bills, etc.;
- What advocacy the NHRI has undertaken to harmonize national laws and practices to international standards and/or to implement recommendation of international human rights system).

6.2.2 Encouraging ratification and implementation of international standards

The Paris Principles state that a national institution shall have the responsibility to encourage ratification of international human rights instruments to which the State is a party, and to ensure their effective implementation.

The ICC has adopted the following General Observations on NHRIs' encouraging ratification or accession to international human rights instruments: The Sub-Committee interprets that the function of encouraging ratification or accession to international human rights instruments, set out in the Paris Principles, is a key function of a National Institution. The Sub-Committee therefore encourages the entrenchment of this function in the enabling legislation of the National Institution to ensure the best protection of human rights within that country.

Discuss how the NHRI carries out this function. Please explain:

- The legal provisions that vest the NHRI with this function;
- How the NHRI carries out this function in practice;
- Examples of advocacy or awareness raising campaigns the NHRI has undertaken to encourage ratification or accession to international instruments.

6.3 Monitoring functions

The Paris Principles state that a NHRI shall have responsibilities in relation to (...) any

situation of violation of human rights which it decides to take up; and (...) on drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government.

Discuss how the NHRI carries out this function. Please explain:

- The legal provisions that vest the NHRI with this function;
- How the NHRI carries out this function in practice;
- How the NHRI is active in monitoring domestic human rights situations (e.g. decision-making bodies, courts, government agencies), including visiting places of deprivation of liberty, etc.
- Whether the Institution monitors government compliance with its advice and recommendations.

6.3.1 Investigation

The Paris Principles state that within the framework of its operation, the national institution shall: hear any person and obtain any information and any documents necessary for assessing situations falling within its competence.

Please complete this section if the NHRI does not have quasi-jurisdictional competence as set out in section 7 below.

Discuss how the NHRI carries out this function. Please explain:

- The legal provisions that vest the NHRI with this function;
- Whether individuals, government, public bodies etc are obliged to provide the NHRI with requested documentation;
- How the NHRI carries out this function in practice (e.g. in the conduct of public inquiries).

6.3.2 Reporting

The Paris Principles state that a NHRI shall have responsibilities in relation to (...) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters.

The ICC has adopted the following General Observations on:

- **Annual Report:** *The Sub-Committee stresses the importance for an NHRI to prepare and publicize an annual report on its national situation with regard to human rights in general, and on more specific matters. This report should include an account of the activities undertaken by the NHRI to further its mandate during that year and should state its opinions, recommendations and proposals to address any human rights issues of concern.*
- **Recommendations by NHRIs:** *NHRI recommendations contained in annual, special or thematic human rights reports should normally be discussed within a reasonable amount of time, not to exceed six months, by the relevant government ministries as well as the competent parliamentary committees. These discussions should be held especially in order to determine the necessary follow up action, as appropriate in any given situation. NHRIs as part of their mandate to promote and protect human rights should ensure follow up action to recommendations contained in their reports.*

Discuss how the NHRI carries out this function. Please explain:

- The legal provisions that vest the NHRI with this function;
- How the NHRI carries out this function in practice;

- How annual and thematic reports are delivered (e.g. publicity, distribution, and languages available; authorities to which it is submitted);
- Whether relevant parties (individuals, government, public bodies etc) are obliged to formally respond to the recommendations and reports of the NHRI;
- How the NHRI follows up with authorities on its recommendations.

6.4 Promotional Functions

6.4.1 By raising awareness on human rights norms and issues

The Paris Principles state that a national institution shall have the responsibility to publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.

Discuss how the NHRI carries out this function. Please explain:

- The legal provisions that vest the NHRI with this function;
- How the NHRI carries out this public education function in practice;
- Whether it makes publications or services available in several languages and if it makes interpretation available;
- What public awareness campaigns the NHRI has undertaken in relation to combating racism.

6.4.2 Through programmes for teaching and research

The Paris Principles state that a national institution shall have the responsibility to assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles.

Discuss how the NHRI carries out this function. Please explain:

- The legal provisions that vest the NHRI with this function;
- How the NHRI carries out this education function in practice;
- Examples of the NHRI's initiatives in such programmes in schools, universities and professional groups.

6.4.3 By addressing public opinion

The Paris Principles state that within the framework of its operation, the national institution shall address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations.

Discuss how the NHRI carries out this function. Please explain:

- The legal provisions that vest the NHRI with this function;
- How the NHRI carries out this public education function in practice;
- What policies and strategies the NHRI has to engage with the media.

7. QUASI-JURISDICTIONAL FUNCTIONS (optional, only for those NHRIs having quasi-judicial powers)

The Paris Principles state that a national institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organizations, and associations of trade unions or any other representative organizations. In such

circumstances, and without prejudice to the principles stated above concerning the other powers of the commissions, the functions entrusted to them may be based on the following principles:

(a) Seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality;

(b) Informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them;

(c) Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;

(d) Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations and administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.

Discuss how the NHRI carries out this function. Please explain:

- The legal provisions that vest the NHRI with this function;
- How the NHRI carries out this complaints handling function in practice (i.e. an overview of the mechanisms and procedures adopted to receive, investigate, and handle complaints received).

Please provide an account of complaints-handling statistics (e.g. number and typology of complaints received and processed; resolved; dismissed; referred).

8. RELATIONSHIP WITH RELEVANT HUMAN RIGHTS STAKEHOLDERS AND OTHER BODIES

8.1 Relationships with Civil Society

The Paris Principles state that within the framework of its operation, the national institution shall, in view of the fundamental role played by the non-governmental organizations in expanding the work of the national institutions, develop relations with the non-governmental organizations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.

Discuss how the NHRI carries out this responsibility. Please explain:

- Whether the provisions in the NHRI's founding law formalises relationships between the NHRI and civil society;
- How the NHRI has developed relationships with NGOs in practice;
- Which civil society groups the NHRI cooperates with (i.e. NGOs, trade unions, professional organisations, individuals or organisations espousing trends in philosophical or religious thought, universities and qualified experts, parliament and government departments);
- How frequent and what type of interaction the NHRI has with NGOs (e.g. workshops, meetings, joint projects, through complaints handling).

8.2 Relationship with other with other bodies

The Paris Principles state that within the framework of its operation, the national institution shall maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular ombudsmen, mediators and similar institutions).

*The ICC has adopted the following General Observations on **Cooperation with other human rights institutions**: NHRIs should closely cooperate and share information with statutory institutions established also for the promotion and protection of human rights, for example at the state level or on thematic issues, as well as other organizations, such as NGOs, working in the field of human rights and should demonstrate that this occurs in their application to the ICC Sub-Committee.*

Discuss how the NHRI carries out this responsibility. Please explain:

- Whether the provisions in the NHRI's founding law formalise relationships between the NHRI and other bodies with human rights responsibilities;
- How the NHRI has developed relationships with these bodies in practice;
- Which bodies the NHRI cooperates with (i.e. governmental agencies, the justice system, the parliament, any human rights committees, or any other bodies that might affect the human rights situation in the country);
- How frequent and what type of interaction the NHRI has with such bodies (e.g. training, consultations, meetings, joint projects, through complaints handling)
- The NHRI's relationship with other human rights institutions at the national level (e.g. specialised human rights institutions, ombudsmen) (OPTIONAL: only for NHRIs operating in countries where such bodies have been established).

8.3 Cooperation with the United Nations and other organizations

The Paris Principles state that a national institution shall have the responsibility to cooperate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the promotion and protection of human rights. It is important for NHRIs to engage with the international human rights system, in particular the Human Rights Council and its mechanisms (Special Procedures Mandate Holders) and the United Nations Human Rights Treaty Bodies. This means generally NHRIs providing input to, and participating in, these human rights mechanisms and following up at the national level to the recommendations resulting from the international human rights system. In addition, NHRIs should also actively engage with the ICC and its Sub-Committee on Accreditation, Bureau as well as regional coordinating bodies of NHRIs.

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

Discuss how the NHRI carries out this function. Please explain:

- The legal provisions that vest the NHRI with this function;
- How the NHRI carries out this function in practice;
- Which UN mechanisms the NHRI has engaged with (e.g. Human rights Council, UPR, Treaty Bodies, Special procedures mandate holders, Commission on the Status of Women, etc)
- Which regional mechanisms the NHRI has engaged with (e.g. regional human rights commissions, courts, etc);
- The type of interaction the NHRI has had with these bodies (e.g. sending information, parallel reports, amicus curiae briefings; attending the meetings; acting as an implementing partner etc)
- How your NHRI has followed up at the national level to the recommendations resulting from these bodies, etc.);
- Which UN agencies the NHRI has engaged with (e.g. OHCHR regional or field offices, UNDP, UNCHR, human rights components of UN peacekeeping missions, etc);
- The type of interaction the NHRI has had with these bodies (e.g. sharing information, undertaking joint activities, acting as an implementing partner etc).

SPECIFIC MANDATE (OPTIONAL)

*****only for those NHRIs which have been formally designated as NPM, by States that have ratified OPCAT*****

9. NATIONAL PREVENTIVE MECHANISM UNDER OPCAT

Under OPCAT: “Each State Party shall maintain, designate or establish, at the latest one year after the entry into force of the present Protocol or of its ratification or accession, one or several independent national preventive mechanisms for the prevention of torture at the domestic level. Mechanisms established by decentralized units may be designated as national preventive mechanisms for the purposes of the present Protocol if they are in conformity with its provisions (Art. 17). NPMs will be allowed to visit any place under the State jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence (hereinafter referred to as places of detention)). These visits shall be undertaken with a view to strengthening, if necessary, the protection of these persons against torture and other cruel, inhuman or degrading treatment or punishment (art.4). The States Parties shall guarantee the functional independence of the national preventive mechanisms as well as the independence of their personnel. (2) The States Parties shall take the necessary measures to ensure that the experts of the national preventive mechanism have the required capabilities and professional knowledge. They shall strive for a gender balance and the adequate representation of ethnic and minority groups in the country. (3) The States Parties undertake to make available the necessary resources for the functioning of the national preventive mechanisms. (4) When establishing national preventive mechanisms, States Parties shall give due consideration to the Principles relating to the status of national institutions for the promotion and protection of human rights Article 18: (1).

For more information please refer to art. 19-23 and 35 of OPCAT.

Please discuss how the NHRI carries out its function. Please explain³⁸:

³⁸ Questions in this section are mainly based on the guidelines for the ongoing development of NPM published in the first annual report of the Subcommittee on Prevention of Torture and other cruel, inhuman or degrading treatment or punishment (February 2007- March 2008), pages 28-29.

1. Are the mandate and powers of the NPM clearly and specifically established in national legislation as a constitutional or legislative text?
2. How “places of deprivation of liberty” visited by the NPM are defined? Is this definition in line with the OPCAT requirements?
3. Is the NPM established by a public, inclusive and transparent process?
4. Does it include civil society and other actors involved in the prevention of torture?
5. Has the designation of the NHRI as the NPM be open for debate, involving civil society?
6. How the independence of the NPM is fostered?
7. What is the process of selection and appointment of members?
8. Are ways to avoid questions of conflict of interest in place?
9. Are there stated criteria relating to the experience and expertise required to carry out NPM work effectively and impartially?
10. Is the NPM gender-balanced?
11. Does the NPM have adequate representation of ethnic, minority and indigenous groups?
12. Has the State taken the necessary measures to ensure that the expert members of the national preventive mechanism have the required capabilities and professional knowledge?
13. Have ad-hoc training been provided to the NPM?
14. Have adequate resources been provided for the specific work of the NPM (in accordance with article 18, 3 of the OPCAT)? Are they ring-fenced, in terms of both budget and human resources?
15. Does the work programme of the NPM cover all potential and actual places of deprivation of liberty?
16. Does the scheduling of the NPM visits ensure effective monitoring of such places with regard to safeguards against ill-treatment?
17. Have working methods of the NPM been developed? Have they ever been reviewed with a view to effective identification of good practice and gaps in protection?
18. Does the NPM report on visits with feedback on good practice and gaps in protection to the institutions concerned?
19. Does the NPM address recommendations to the responsible authorities on improvements in practice, policy and law?
20. Has the NPM established an ongoing dialogue with authorities based on the recommendations for changes arising from the visits and the action taken to respond to such recommendations (as per article 22 of the OPCAT)?
21. Does the NPM publish its annual report (as per article 23 of the OPCAT)?
22. Does the NPM communicate with the international human rights system and, in particular, with the Sub-committee on Prevention?