

**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, 11 – 15 October 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 11 to 15 October 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, the Network of the Americas and the ICC representative in Geneva.
- 1.4.** Pursuant to article 10 of the Statute, the SCA considered an application for accreditation from the NHRI of Congo.
- 1.5.** Pursuant to article 15 of the Statute, the SCA also considered applications for re-accreditation from the NHRIs of Austria, Bosnia and Herzegovina, Burkina Faso, Nigeria and Slovakia.
- 1.6.** Pursuant to article 16.2 of the Statute, the SCA reviewed certain issues regarding the NHRIs of Azerbaijan, Great Britain and Honduras.
- 1.7.** Pursuant to article 17 of the Statute, the SCA reviewed certain issues regarding the NHRIs of Algeria, Jordan, Luxembourg, Malaysia, Morocco, Qatar and Senegal.
- 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. The SCA is currently considering the development of General Observations on NHRIs serving as National Monitoring/ Preventative Mechanisms; the quasi-judicial competency of NHRIs; and assessing the performance of NHRIs.

1.11. 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 General Observations. At its March 2010 session, the SCA reviewed a Discussion Paper on the Proposed Review of General Observations prepared by Canada and reviewed by APF and OHCHR. A consultation on the General Observations was carried out within the Asia-Pacific and European regions. The Working Group on the Revision of General Observations prepared an Interim Report (attached as Annex 4) which includes the results of the consultations in the Asia Pacific and European Region. The Interim Report was presented to the Bureau at its meeting on 7 October 2010. A consultation is also taking place within the African and Americas regions; the outcome of which is expected before the end of December 2010. A Decision Paper on the Review of the General Observations will be presented at the ICC General Meeting in May 2011.

1.12. The SCA notes that when specific issues are raised in its report in relation to accreditation, re-accreditation, special or other reviews, 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.
- 1.14.** 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 the 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 were given one week to provide any comments on them. As in previous cases, once the recommendations of the SCA are adopted by the ICC Bureau, the summaries, the comments and the statements of compliance will be posted on the NHRI Forum (www.nhri.net). The summaries are only prepared in English, due to financial constraints.

2. SPECIFIC RECOMMENDATIONS – ACCREDITATION APPLICATIONS

2.1. Congo: Commission Nationale des Droits de l’Homme (CNDH)

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

The SCA notes the CNDH’s Annual Report lacks sufficient information regarding the activities undertaken in the fulfilment of its mandate. Therefore the effectiveness of the CNDH and its compliance with the Paris Principles could not be assessed. The SCA encourages the CNDH to continue making best efforts in carrying out its work on the promotion and protection of human rights, and encourages the CNDH to prepare a detailed strategic plan of its programmes and activities. The SCA acknowledges the difficult circumstances under which the CNDH has been operating.

The SCA notes:

1. The current participation of women in the CNDH is low and encourages it to increase the representation of women.
2. The enabling legislation is silent on the selection and appointment process of the Commission members. Currently, the General Secretary of the Government coordinates the process. The SCA refers to General Observation 2.2 “Selection and appointment of the governing body” and emphasizes the importance of establishing a clear, transparent and participatory selection process, including the establishment of a selection committee.
3. The Commission stated that it has 27 staff members, out of which 23 are seconded, including those at the highest level such as the Secretary General, Chief of Staff and Chief of the Treasury Department. This situation puts in doubt the Commission’s authority and ability to recruit its own staff, which may ultimately be a threat to its independence. The SCA refers to General Observations 2.4 and 2.7, respectively, “Staffing by secondment” and “Staff of an NHRI”.
4. The CNDH reports it is faced with insufficient resources which limits its capacity to implement its programmes and activities, particularly in regards to the functioning of its departmental offices. The SCA refers to General Observation 2.6 “Adequate funding”.

5. The law is silent on whether the Annual Report should be made public. The CNDH did not provide any explanation or information on whether the Report had been publicly distributed. The SCA refers to General Observation 6.7 “NHRI Annual Report”.

The SCA encourages the CNDH to seek advice and assistance from OHCHR and the Network of African NHRIs.

3. SPECIFIC RECOMMENDATIONS – RE-ACCREDITATION APPLICATIONS

3.1 Austria: Austrian Ombudsman Board (AOB)

Recommendation: The SCA recommends that consideration of the review of the AOB be **deferred** to its next session. The AOB retains its **B status** during this period.

The SCA notes that the AOB requested the deferral of its review to the next SCA session. The SCA draws the AOB’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”.

The SCA encourages the AOB to seek advice and assistance from OHCHR and the European Coordinating Committee.

3.2 Bosnia and Herzegovina: Human Rights Ombudsman of Bosnia and Herzegovina (IHROBH)

Recommendation: The SCA recommends the IHROBH be re-accredited with **A status**.

The SCA commends the efforts undertaken by the IHROBH in order to follow up on the SCA's recommendations made during its November 2009 session. The SCA encourages the IHROBH to continue to pursue the steps set out in the Action Plan it developed to address all of the SCA’s recommendations.

The SCA notes:

1. The critical importance of the selection and appointment process of the governing body in ensuring the pluralism and independence of the National Institution. The SCA notes that the IHROBH has recognized the need to have a pluralistic selection process and has informed Parliament of this. The SCA further notes that the IHROBH intends on proposing legislative amendments to address this issue.
2. Financial systems should be such that an NHRI has complete financial autonomy. This should be a separate budget line over which it has absolute management and control. The SCA notes that the IHROBH has recognized this and has stated that it intends on proposing legislative amendments to address this issue.

The SCA will again consider these issues at its second session of 2012.

The SCA encourages the IHROBH to seek advice and assistance from OHCHR and the European Coordinating Committee in this endeavour.

3.3 Burkina Faso: Commission Nationale des Droits de l’Homme (CNDH)

Recommendation: The SCA recommends that consideration of the review of the CNDH be **deferred** to its second session of 2011. The CNDH retains its **B status** during this period.

The SCA notes that the CNDH requested the deferral of its review to not before the second half of 2011. The SCA draws the CNDH’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”.

The SCA encourages the CNDH to seek advice and assistance from OHCHR and the Network of African NHRIs.

3.4 Nigeria: National Human Rights Commission (NHRC)

Recommendation: The SCA recommends that consideration of the review of the NHRC be **deferred** to its next session. The NHRC retains its **B status** during this period.

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

The SCA notes that the National Human Rights Commission Act (Amendment) Bill 2010 was passed by the Upper Legislative Chamber on 2 February 2010, and the House of Representatives on 3 June 2010, and requires only the President’s assent to become law. The SCA encourages the NHRC to urge Presidential assent of the Bill prior to the next SCA session, which will allow the SCA to make a determination and recommendation on the status of the NHRC.

The SCA encourages the NHRC to seek advice and assistance from OHCHR and the Network of African NHRIs.

3.5 Slovakia: National Centre for Human Rights (NCHR)

Recommendation: The SCA recommends that consideration of the NCHR be **deferred** to its next session. The NCHR retains its **B status** during this period.

The SCA was unable to make a determination of the accreditation status of the NCHR as it did not have sufficient information before it to do so. The SCA encourages the NCHR to seek advice and assistance from OHCHR and the European Coordinating Committee, in providing the necessary information required.

4. SPECIFIC RECOMMENDATIONS – REVIEWS UNDER ARTICLE 16.2 OF THE ICC STATUTE

4.1 Azerbaijan: The Human Rights Commissioner (Ombudsman) of the Republic of Azerbaijan (HRCA)

Recommendation: The SCA recommends that consideration of the review of the HRCA be **deferred** to its next session. The HRCA retains its accreditation **A status** during this period.

The SCA did not receive a sufficient response from the HRCA to the Concluding Observations of the Committee Against Torture (CAT/C/AZE/CO/3), which stated: “*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 SCA notes that this Concluding Observation was one of the two stated reasons for conducting the Special Review of the accreditation status of the HRCA at this session, and expresses regret that the HRCA did not provide sufficient information to address the concerns of the Committee Against Torture.

The SCA did not receive a sufficient response from the HRCA to the second reason for conducting the Special Review of the accreditation status of the HRCA at this session, namely the circumstances surrounding the re-appointment process of the Commissioner for Human Rights. Pursuant to Constitutional law, the term of the Commissioner expired on 2 July 2009, and a new Commissioner was to be elected 30 days before the end of the Commissioner’s term. The Constitutional law at that time did not provide for the possibility of re-appointment of the Commissioner. The current Commissioner did not leave office following the expiration of her term, and on 26 November 2009, an amendment to the Constitutional law was passed which allowed the incumbent to be re-appointed for an additional 7-year term, and the current Commissioner was re-appointed for a second term on 5 March 2010. This process raised concerns with the SCA as to the independence regarding the transparency of the appointment procedures and the independence of the HRCA, which concerns were not sufficiently addressed by the HRCA.

The SCA received publicly available information from civil society which raised similar concerns as to the independence and effectiveness of the HRCA. The HRCA did not provide a sufficient response to the concerns raised.

During the course of its review of the HRCA at the current session, the SCA noted concerns with provisions of the Constitutional law of the HRCA, including the absence of provisions dealing with the selection and appointment process of the Commissioner, and determined that further review and analysis of the Constitutional law was required to ensure the establishment of the HRCA complies with the Paris Principles in law.

While the SCA considered reaching a decision on the accreditation status of the HRCA at the current session, to ensure the HRCA is given full opportunity to receive and reply to all information before the SCA, the SCA decided to defer consideration of the accreditation status of the HRCA to its next session.

The SCA draws the HRCA'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."

The SCA encourages the HRCA to seek advice and assistance from OHCHR and the European Coordinating Committee.

4.2 Great Britain: Equality Human Rights Commission (EHRC)

Recommendation: The SCA recommends the EHRC retain its **A status**.

The SCA notes that the EHRC took action and provided responses to the issues of concern raised by 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 actions taken and information provided included:

- Changes to internal arrangements for delivery as well as a detailed description of its actions and activities implemented in the fulfilment of its human rights mandate. Some of the activities include recommendations to Government, Inquiries, legal interventions, monitoring, advocacy, reports to international treaty bodies and statements to the UN Human Rights Council, advice and recommendations made to Parliament, analysing Bills and making recommendations, research activities, promotional and advocacy activities of human rights. The Commission has been engaged in international, national and regional work and activities.
- The EHRC agreed with the Committee's conclusion that it was undesirable to operate over a long period of time without a permanent Chief Executive. The Commission was unable to proceed with the appointment of a new permanent Chief Executive as the first recruitment exercise, begun in July 2009, had been terminated due to the Government's announcement a review of top public sector pay which could have resulted in changes to the salary for the post. The second recruitment exercise, begun in May 2010, was also terminated at the request of the Government, pending the review of non-governmental public bodies, initiated by the Cabinet Office. The Commission gave an assurance that it "will proceed with the appointment of a Permanent Chief Executive as soon as it is able to do so."
- The EHRC noted that the Committee recognized that the Chair had relinquished his controlling interests in the Equate organisation. It noted that the Chair was employed by the Commission on a part-time basis, an arrangement agreed to by the Government. The arrangement also allows him to undertake activities during his non-Commission time, subject to managing any conflict of interests. The Commission advised that in an effort to avoid any perceived conflict of interest, the Chair of the Commission had resigned his position as director of Equate and reduced his interest. He now retains a minority shareholding (20%) in the company but he plays no part in directing the affairs of the company. References to the Equate organisation have also been removed from the Chair's personal website.

The SCA notes with regret the adverse impact on the Institution arising from the matters noted in the House of Lords/House of Commons JCHR report.

The SCA encourages the EHRC to continue to work with OHCHR and the European Coordinating Committee.

4.3 Honduras: Comisionado Nacional de los Derechos Humanos de Honduras (CONADEH)

Recommendation: The SCA informs the CONADEH of its intention to recommend to the ICC Bureau that the CONADEH be accredited with **B status**, and gives the Comisionado 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 CONADEH retains its **A status** during this period.

The SCA notes:

1. No documentary evidence was provided to address all the concerns raised by the UN High Commissioner in her report to the Human Rights Council on the violations of human rights in Honduras since the coup d'état (A/HRC/13/66). The CONADEH provided a letter to the SCA Chairperson as a response to the issues of concern, which states: "the High Commissioner's Report was drafted in a malicious manner with a minimum part of proved facts". In its report the CONADEH states to have sent a letter to the President of the Congress regarding the CONADEH's disagreement with the measures taken during the coup d'état.
2. The CONADEH did not provide sufficient information on the organisational structure, composition, staff members, budget or Annual Report.
3. Although the CONADEH has a broad mandate to promote and protect human rights (Articles 1 and 9 of the Organic Law 153-1995), no documentary evidence on the performance of the CONADEH was submitted. According to the UN High Commissioner's report, the CONADEH failed to fulfil its protection mandate. In this regard, the 2009 Annual Report describes some actions taken by the CONADEH during the coup d'état, however its content is weak and does not provide detailed and substantive information on the alleged human rights violations and how the CONADEH addressed those violations. The Annual Report does not provide details such as numbers of victims subsequent to the coup d'état, the violations committed, the complaints received or cases investigated. There is also no indication in the Report on the monitoring activities, recommendations or advice provided to the Government.
The SCA draws the attention of the CONADEH to Paris Principles A 3(iv) and General Observations 1.2 "Human rights mandate" and 1.6 "Recommendation byNHRIs". The SCA also refers to General Observation 6.7 "NHRI Annual Report".
4. The Annual Report contains statements made by the CONADEH that support the Government following the coup d'état, which brings into question the independence of

the national institution. The SCA refers to General Observation 5.1 “NHRIs during the situation of a coup d’état or a state of emergency”.

5. The Annual Report reflects the lack of interaction between the CONADEH and the International Human Rights system. In the Annual Report the CONADEH questioned and criticized the role and reports of international observers such as the Organisation of American States (OAS) and the UN during the crisis in Honduras. The Report states the International Mission of Observers “lied in its report on the human rights situation in Honduras”. The SCA refers to General Observation 1.4 “Interaction with the International Human Rights System”.
6. The Report of the UN High Commissioner on the Human Rights Violations in Honduras since the coup d’état on 28 June 2009, reflects the lack of cooperation between the CONADEH and the NGOs and other civil society organisations. Moreover, the CONADEH states in its letter that no NGOs exist in Honduras. The SCA refers to General Observation 1.5 “Cooperation with other human rights institutions.”

The SCA encourages the CONADEH to seek advice and assistance from OHCHR and the Network of the Americas.

5. SPECIFIC RECOMMENDATIONS – REVIEWS UNDER ARTICLE 17 OF THE ICC STATUTE

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

Recommendation: The SCA recommends the CNCPPDH maintain its **B status**.

The SCA notes its concern that the CNCPPDH has not taken steps to address the recommendations of the SCA made at its March 2010 session regarding the legislative amendments necessary to bring it into conformity with the Paris Principles. The SCA therefore reiterates those recommendations here:

1. 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”.
2. There is no legislative provision regarding the recruitment of staff. Further, senior-level staff are appointed by the President of the Republic which undermines the principle of institutional independence. The SCA refers to General Observations 2.4 “Staff by secondment” and 2.7 “Staff of an NHRI”.

3. That all the CNCPPDH members are part-time. It refers to General Observation 2.8 “Full-time members”.
4. 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 through the establishment of systematic cooperation. It refers to General Observation 1.5 “Cooperation with other human rights institutions”.

Further, the SCA requests detailed information on the substantive work done by the CNCPPDH to investigate and address human rights violations related to enforced disappearances, torture and impunity.

The SCA encourages the CNCPPDH to continue its engagement with the relevant national authorities in order to pursue the required legislative amendments, and to seek the advice and assistance of the OHCHR and the African Network of NHRIs.

The SCA requests that the Commission submit its accreditation application when the above issues have been addressed.

5.2 Jordan: National Centre for Human Rights (NCHR)

Recommendation: The SCA recommends the NCHR maintain its **A status**.

The SCA acknowledges the satisfactory actions taken by the NCHR to respond to its recommendations made at its October 2007 session. It acknowledges the efforts undertaken by the Centre to standardize the selection process of its Board of Trustees members in line with the Paris Principles and requests the Centre to transmit a copy of these Directives to it once formalized.

The SCA notes that while the Centre’s core activities are funded by the Government, a significant amount of its project funding is drawn from donors. It stresses the importance of ensuring adequate funding in a sustainable manner which should, to a reasonable degree, ensure the gradual and progressive realization of the improvement of the organization’s operations and the fulfillment of its mandate. The SCA refers to General Observation 2.6 “Adequate funding.”

The NCHR is encouraged to continue to seek advice and assistance from OHCHR and the Asia-Pacific Forum of NHRIs.

5.3 Luxembourg: Commission Consultative des Droits de l’Homme of Luxembourg (CCDH)

Recommendation: The SCA recommends the CCDH maintain its **A status**.

The SCA is satisfied with the efforts undertaken by the CCDH to address the SCA’s concerns regarding the dismissal provisions of its members and as to ensuring sufficient budgetary allocation and the autonomous control over the budgetary process. The SCA requests the CCDH to transmit a copy of its dismissal provisions once formalized.

The SCA notes the CCDH has not satisfactorily responded to its concern noted at the SCA November 2009 session that the CCDH's enabling legislation does not include a provision to ensure the functional immunity of its members, that is, protection from liability for actions undertaken in their official capacity. Such protection reinforces the independence of an NHRI and its ability to engage in critical analysis and commentary on human rights issues. The SCA refers it to General Observation 2.5 "Immunity".

The NCHR is encouraged to continue to seek advice and assistance from OHCHR and the European Coordinating Committee.

5.4 Malaysia: National Human Rights Commission of Malaysia (SUHAKAM)

Recommendation: The SCA recommends that SUHAKAM be re-accredited with **A status**.

The SCA welcomes the adoption in 2009 of the two Human Rights Commission of Malaysia (Amendment) Acts and expresses its appreciation for the constructive approach taken by SUHAKAM in pursuing both sets of amendments with the Government.

The SCA also welcomes the appointment of the new Chairperson and Commissioners.

The SCA:

1. Notes the ongoing development of KPIs and its previous recommendation that once adopted, they be made public. KPIs should not be used to infringe upon the functional independence and organizational and financial autonomy of an NHRI. The SCA therefore encourages SUHAKAM to ensure that the finalisation of KPIs does not restrict the Institution's ability to review and revise its priorities, dependent upon its assessment of the domestic human rights situation.
2. Refers to General Observation 1.5 "Cooperation of NHRIs with other human rights institutions" and encourages SUHAKAM to work closely with civil society organizations.

SUHAKAM is encouraged to continue to seek advice and assistance from OHCHR and the Asia-Pacific Forum of NHRIs.

5.5 Morocco: Conseil Consultatif des Droits de l'Homme (CCDH)

Recommendation: The SCA recommends the CCDH be re-accredited with **A status**.

The SCA commends the efforts undertaken by the CCDH to address the SCA's recommendations made at its October 2007 session. However the SCA notes the following concerns have not been fully addressed:

- 1) There has been no action by the CCDH to translate the Royal Dahir into a constitutional or legislative text and it has not provided a sufficient explanation for not doing so.

- 2) The CCDH has not pursued legislative amendments to ensure broad consultation throughout the selection and appointment process of Council members. The SCA refers to General Observation 2.2 “Selection and appointment of the governing body”.
- 3) The Royal Dahir does not include a provision to ensure the functional immunity of the Council members, that is, protection from legal liability for actions undertaken in the official capacity of the NHRI. The SCA refers to General Observation 2.5 “Immunity”,
- 4) The Royal Dahir is silent on the dismissal and removal process of Council members. The SCA refers to General Observation 2.9 “Guarantee of tenure for members of governing bodies”.

It encourages the CCDH to work towards having the Royal Dahir amended and to seek advice and assistance from OHCHR and the Network of African NHRIs, in doing so.

The SCA will again consider these issues at its second session of 2012.

5.6 Qatar: National Human Rights Committee (NHRC)

Recommendation: The SCA recommends the NHRC be re-accredited with **A status**.

The SCA commends the efforts taken by the NHRC to address the SCA’s recommendations at its March 2010 session and welcomes the enactment of the Decree Law No. (17) dated 19 August 2010.

The SCA encourages the NHRC to ensure their internal procedures for the selection, appointment and dismissal of members are in writing, and requests a copy be transmitted to it once finalized

The SCA encourages the NHRC to seek advice and assistance from OHCHR and the Asia-Pacific Forum of NHRIs.

5.7 Senegal: Comité Sénégalais des Droits de l’Homme (CSDH)

Recommendation: The SCA recommends that consideration of the review of the CSDH be **deferred** to its next session. The CSDH retains its **A status** during this period.

The SCA notes the CSDH did not submit its review application in time and draws the CSDH’s attention to article 19 of the ICC Statute which states: “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.”

The SCA also draws the CSDH’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”.

It encourages the CSDH to seek advice and assistance from OHCHR and the Network of African NHRIs.

Annex I

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

STATUTE

<p>Art 1.1</p>	<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 coordinating secretariats, namely:</p>
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	<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	Independence of Members 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.
Art 31.1	SECTION 7: REGIONAL GROUPING OF MEMBERS For the purpose of ensuring a fair balance of regional representation on the ICC the following regional groups are established: <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	SECTION 8: GENERAL MEETINGS OF MEMBERS The General Meeting is composed by the ICC members and constitutes the supreme

	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;

(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

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 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 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 and Regional Mechanisms Section, OHCHR, CH-1211 Geneva 10, Switzerland and by email to: niu@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 Statute¹, 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

¹ Formerly article 3(g) of the ICC Rules of Procedure.

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 Statute² 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.

² Formerly Rule 3 (b) of the ICC Rules of procedure.

Annex IV

INTERIM REPORT
ON THE
REVIEW OF THE GENERAL OBSERVATIONS
DEVELOPED BY THE ICC SUB-COMMITTEE ON
ACCREDITATION

OCTOBER 2010

Submitted by the
Working Group on the Review of General Observations

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1. INTRODUCTION

1.1 Purpose of Interim Report

This Interim Report has been prepared for the consideration of the Bureau of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) at its second session of 2010, held on October 7, 2010, in Edinburgh, Scotland.

It serves to update the Bureau on the progress made by the ICC Sub-Committee on Accreditation (SCA) Working Group, regarding the fulfillment of its Terms of Reference on the revision of General Observations.

It further seeks the Bureau's feedback on the recommended proposals in the Interim Report, with a view to their inclusion in the Decision Paper on the review of the General Observations to be tabled for approval by the ICC membership at its 25th session, to be held in March 2011, in Geneva, Switzerland.

1.2 Format of Interim Report

The Report has 4 main sections as follows:

- Section 2 (Background) summarizes the Terms of Reference for the Working Group, as adopted by the SCA at its March-April 2010 session, held in Geneva, Switzerland;
- Section 3 (Methodology) describes the consultations undertaken by the Working Group with NHRIs in the European and Asia-Pacific regions. A similar consultation format is expected to take place with NHRIs from the Americas and Africa regions;
- Section 4 (Consultation Outcomes) proposes: changes to the process for the development of new General Observations; the revision or supplementation of existing General Observations; and, improved communication and education for stakeholders on the relevant standards and the accreditation process;
- Section 5 (Conclusions) provides a summary of the working groups recommendations to date.

2. BACKGROUND

2.1 Summary of the Terms of Reference for the Working Group on the Review of General Observations³

Sections 6.2 and 6.3 of the SCA Rules of Procedure provide the SCA with authority to develop General Observations. In practice, the General Observations are drafted by the SCA at its twice-yearly meetings and are subsequently approved by the ICC Bureau when it considers the SCA's sessional reports.

As interpretations of the requirements of the Paris Principles, the General Observations are a key normative tool used to strengthen the accreditation and review process, accelerate NHRI maturity, and improve State compliance with the Paris Principles. However, at ICC 22, the SCA presented a Discussion Paper on the Proposed Review of General Observations, which identified two main factors contributing to members' undervaluation and underutilization of the General Observations. These were a lack of confidence in their relevance and purpose, and a lack of clarity due to ambiguities in their wording.

In accordance with the decision of members at ICC 22, the SCA established a Working Group with a mandate to review the General Observations, and in particular to make recommendations for: improving the drafting process; supplementing or revising the text of the existing General Observations and improving stakeholder understanding of the Paris Principles, General Observations and the accreditation and review process.

The Working Group was requested to present an Interim Report of its progress to the ICC Bureau at its second session of 2010, following which a Decision Paper will be prepared and presented to the ICC membership at its 25th General Meeting.

The Working Group is composed of representatives from the Canadian Human Rights Commission and the Secretariat of the Asia-Pacific Forum of NHRIs, and is supported by the ICC Secretariat (OHCHR).

3. METHODOLOGY

3.1 Consultations undertaken with regional groupings of NHRIs

The Working Group prepared a questionnaire (Annex B) to obtain information about NHRIs' experiences and views on the ICC accreditation process and the General Observations. The ICC Regional Representatives, in consultation with the Regional Coordinating Committees, were requested to facilitate the circulation of the questionnaire; to collect and collate the responses and provide these to the SCA Working Group; and, where possible, to include a session on the ICC accreditation process in their next regional meeting.

³ The complete Terms of Reference may be found in Annex A of this Report.

The results of NHRI consultations included in this Interim report reflect the views of the European and Asia-Pacific NHRIs only. The Africa and Americas regions are expected to submit the responses from their region before the end of the year. Their views will be included in the SCA's subsequent Decision Paper to be presented to the ICC Plenary in 2011.

4. CONSULTATION OUTCOMES

4.1 Standardizing the Future Development of General Observations

(a) Results of NHRI consultation

In responding to part D of the questionnaire regarding the development of future General Observations, NHRIs expressed support for the SCA's initiative to notify ICC members and invite their input prior to drafting a General Observation.

Most agreed they would be prepared to contribute to the development of the General Observations though noted that domestic priorities may limit capacity at various times. NHRIs also highlighted the need to reinforce channels of communication with the SCA, and suggested the support of their regional representatives and regional coordinating committees (RCCs) in achieving this. NHRIs also highlighted the need for more information on the application of each General Observation.

In developing future General Observations and revising or supplementing existing ones, the following conceptual and practical issues should be considered:

(i) Communication to members

The SCA currently uses its sessional reports to advise members of an intention to develop new General Observations. However, given the size and complexity of these reports, the notification is often lost. Members have expressed a preference for direct communication inviting their input on new General Observations. The use of both SCA regional representatives, ICC Regional Chairs and RCCs has been highlighted as a means of coordinating communications and responses by region.

(ii) Providing greater clarity and justification

As previously mentioned, one criticism of the General Observations has been that their short format implicitly assumes that all members have a detailed knowledge of the existing international standards. This is not necessarily so, particularly in the context of new institutions. Members have expressed a desire for more detailed information that provides justification for the General Observation in the context of the relevant Paris Principle and its underlying concepts

(iii) Differentiating between different institutional models and political systems

In relation to several General Observations, members raised concern about their application to NHRIs based on different models or operating in different political systems. While the Paris Principles sought to develop broad principles applicable to all NHRIs, the variety of institutional models and political systems that now exist suggest that these are a relevant issues for the SCA

to consider, and to seek member input, in the context of the ‘application’ of particular General Observations. It was noted that this should not however be used as justification for developing differential standards, particularly on fundamental issues such as the requirement for constitutional/legislative mandate, independence and security of tenure of members, and financial autonomy.

(iv) Accreditation decision based on draft General Observations

In order to maintain the transparency and objectivity of the accreditation process, an accreditation decision should not be based on a General Observation that is pending approval by the ICC Bureau. To do so would leave the ICC Bureau open to criticism that it had, or could be perceived to have had, agreed to a General Observation in support of a particular accreditation application. Where an accreditation decision cannot be made consistent with the existing ICC interpretation of the Paris Principles, the accreditation should be delayed until the ICC Bureau has considered and accepted a General Observation on its own merit.

(b) Recommended proposal for adoption by Bureau

Subject to the results of consultations conducted in the African and Americas regions, the Working Group foreshadows the following recommendations:

- establishing formal communications channels with Regional Chairs and Regional Coordinating Committees to ensure members are aware of, and are able provide input at the initial stages;
- the inclusion of greater information on the justification and application of a General Observation. This might include the relevant Paris Principles, its underlying concepts, and where possible, indicative information about practical application.
- where possible and appropriate, the inclusion of information on the application of General Observations to different institutional models and political systems;
- adopting procedures that facilitate the timely development of General Observations and the consideration of accreditation applications, while avoiding any perceptions of conflicts between the two roles.

4.2 Revising the Existing General Observations

(a) Results of NHRI consultation

The responses received from NHRIs on part C of the questionnaire regarding the usefulness and value of the existing General Observations confirms the need for their revision.

In addition to identifying which General Observations⁴ require clarification⁴, respondents elaborated on the criteria to be used. These include:

⁴ The following General Observations were cited as being unclear, ambiguous, or possibly misunderstood: 1.1 (*Establishment of national institutions*), 1.3 (*Encouraging ratification or accession to international human rights instruments*), 1.4 (*Interaction with the International Human Rights System*), 1.6 (*Recommendations by NHRIs*), 2.2 (*Selection and appointment of the governing body*), 2.5 (*Immunity*), 2.6 (*Adequate funding*), 2.7 (*Staff of an NHRI*),

- Distinguishing between General Observations that clarify the underlying objectives of the Paris Principles from those that are either best practices or that relate to the ICC accreditation procedures.
- Maintaining the conciseness of the current format of General Observations, yet elaborating on the context of their practical application. Suggestions offered include:
 - referencing the Paris Principle from which the General Observation is derived and its underlying rationale;
 - considering their application in the context of different institutional models;
 - considering their application in the context of different political systems; and
 - citing examples of their application in practice.
- Clarifying any discrepancies in the text of the General Observation and in the Paris Principles, and assessing the language of the General Observation for potential ambiguities.

Recommended proposal for adoption by Bureau

As the consultation with NHRIs has confirmed the necessity to revise the existing General Observations in order to enhance their comprehensibility, relevancy and clarity. Subject to the results of consultations conducted in the African and Americas regions, the Working Group intends to propose that such a review be undertaken with due regard to the above-noted criteria.

4.3 Stakeholder Outreach and Education

(a) Results of consultation

Part B of the questionnaire assessed NHRIs' understanding of the ICC accreditation process and the General Observations. Although most NHRIs reported an awareness of the requirements of the Paris Principles and the role these play in the accreditation process, respondents identified the need for further training on these issues as well as on the obligations flowing from the SCA recommendations, including those of the General Observations. Specifically, NHRIs suggested that this training be focused on the process and content of making an accreditation application, including the use of all the relevant documents and tools created for this exercise, and notification of any amendments to these. A suggestion was made that the provision of case studies, which illustrate the fulfillment of the requirements of the Paris Principles in practice, would also be a useful learning aid.

(b) Potential outreach strategies

Owing to the growing interest in the ICC accreditation process and the widening impact of the recommendations made by the SCA and its development of General Observations, additional

2.9 (*Guarantee of tenure for members of governing bodies*), 5.3 (*Functioning of an NHRI in a volatile context*), 6.3 (*NHRIs under review*), 6.6 (*More than one NHRI in a State*).

types of outreach and education will become appropriate, in addition to sustaining those efforts currently being made⁵, both to provide education about the accreditation process and also to ensure stakeholder input into its improvement. All outreach efforts should be based on an ongoing dialogue between the SCA and stakeholder groups (ICC members, etc.) to ensure the consideration of member's input into the shaping and utility of the ICC accreditation process.

(i) Building onto the agendas of the ICC plenary meetings & regional meetings

The annual ICC and regional meetings of NHRIs present an opportunity to reach a large and diverse number of stakeholders from the NHRI community and to engage in awareness-raising and information-sharing at the international and regional level. Adding the SCA process as a standing item to the agenda of these meetings would permit the sharing of perspectives on the accreditation process and the specific approaches taken and lessons learned by NHRIs from a variety of institutional model-types and political systems. It could also serve to enhance communication within the NHRI community on accreditation-related issues.

(ii) Engaging and enlarging the roles of ICC Regional Chairs and Regional Coordinating Committees (RCCs)

Regional Chairs and RCCs provide important focal points for outreach and education efforts, their positions enabling them to act as effective conduits between the SCA and NHRIs. They are uniquely situated to take a leadership role in raising awareness about the accreditation process in their regions, and can also be instrumental in establishing a set of best practices for meeting the requirements of the SCA recommendations, including the General Observations. In this way, the regular and consistent participation of Regional Chairs and Coordinators at the biannual SCA sessions, or regular formal communication with them, is strongly encouraged.

(iii) Regular communications through regional and ICC Secretariat (OHCHR) bulletins and the NHRI Forum website

The inclusion of a feature on the SCA process in the quarterly regional and ICC Secretariat (OHCHR) bulletins and as posted on the www.nhri.net website may also form part of a comprehensive outreach effort as this may play a significant role in disseminating the work of the SCA to widest range of stakeholders possible. Examples of the SCA process that may be featured include: a summary of the key outcomes from the previous SCA session; foreshadowing of General Observations to be developed; finalization of General Observations that have been drafted; and, new developments regarding the SCA's working methods.

(iv) Periodic focus groups and roundtables

Conducting focus groups and roundtables of selected stakeholders to solicit views on the SCA's process would, as and when appropriate, assist the SCA in better understanding the concerns

⁵ The focus of the SCA's outreach efforts has thus far included:

- The revision of the accreditation process and its working methods with a view to increasing its rigour, transparency and fairness (See: Decision Paper on Accreditation (March 2008));
- The appraisal of the ICC membership of its work and recommendations through its sessional reports, also serving as a record of its evolving process and working methods;
- The inclusion of SCA regional chairs and coordinating bodies in the work of SCA through their attendance and participation at the biannual SCA sessions.
- The development of General Observations to promote a clearer understanding of the obligations flowing from the Paris Principles;
- The striking up of a Working Group to revise the drafting and process of developing General Observations, including devising a stakeholder outreach and education strategy to promote awareness of their use and importance.

of these groups and may possibly lead to the development of recommendations that will more accurately reflect the diverse perspectives of and reality faced by NHRIs. These activities may have the collateral benefit of raising awareness of the issue with key opinion leaders and promoting dialogue within the regions they represent.

(v) Presentations and workshops

Key experts of the ICC accreditation process may be involved in delivering presentations and workshops on the issue, thereby increasing awareness within the NHRI community and keeping it apprised of the evolving SCA process and working methods. These interactions may also provide opportunities to receive feedback from stakeholder groups on emerging issues of concern regarding ICC accreditation and compliance with the Paris Principles.

(vi) Mentorship within the NHRI community

Although there exists a number of ICC members that will soon undergo re-accreditation for the second time and who, as a result, have amassed knowledge on the requirements of the ICC accreditation process and the obligations flowing from the SCA's recommendations, there are no formalized channels to communicate this expertise within the NHRI community. Thus, establishing a mentorship program matching A-status accredited institutions possessing similar legal structures to applicant institutions seeking accreditation would assist in the knowledge-development of the SCA process and its requirements.

(vii) Comprehensive plain language guide to the SCA process and General Observations

The document entitled the Compilation of SCA Working Methods, which captures the rules, procedures, and guidelines related to the ICC accreditation process, lacks the accessibility of a plain language guide. In addition to devising a user-friendly narrative about the accreditation process, the plain language guide could illustrate how the SCA's recommendations have been met in practice through the inclusion of, as an example, case studies of the actions initiated by accredited-NHRIs to meet their obligations pursuant to the SCA's recommendations.

c) Recommended proposal for adoption by Bureau

The enhanced understanding of how to make use of the ICC accreditation process and the SCA's recommendations, including the General Observations, is crucial to improving Paris Principles compliance.

Subject to the results of consultations conducted in the African and Americas regions, the Working Group therefore intends to recommend that the ICC agree to the SCA further developing its outreach and education strategies in line with the suggestions listed above, and with the appropriate support of the ICC Regional Chairs and RCCs.

5. CONCLUSION

5.1 Summary of Working Group's recommendations

a) Standardizing the Future Development of General Observations

In response to the NHRIs' views on the development of drafting future General Observations, the Working Group recommends the following standardized process be followed:

- establishing strategic communications with members to facilitate input in General Observations;
- the inclusion of greater information on the justification and application of a General Observation;
- where appropriate, the inclusion of information on application to different institutional models and political systems;
- adopting procedures that facilitate the timely development of General Observations and the consideration of accreditation applications, while avoiding any perceptions of conflicts between the two roles.

b) Revising the Existing General Observations

As the consultation with NHRIs has confirmed the necessity to revise the existing General Observations in order to enhance their comprehensibility, relevancy and clarity, the Working Group recommends that such a review be undertaken with due regard to the following criteria:

- Distinguishing between General Observations that clarify the underlying objectives of the Paris Principles from those that are either best practices or that relate to the ICC accreditation procedures;
- Maintaining the conciseness of the current format of General Observations, yet elaborating on the context of their application. Suggestions offered include: referencing the Paris Principle from which the General Observation is derived, and/or stating the rationale for this best practice, and/ or citing a case example of its application in practice;
- Clarifying any discrepancies in the text of the General Observation and in the Paris Principles. Further, assessing the language of the General Observation for any potential ambiguities.

c) Stakeholder Outreach and Education

Since NHRIs bear the primary responsibility for the implementation of the Paris Principles, the enhanced understanding of how to make use of the ICC accreditation process and the SCA's recommendations, including the General Observations, is crucial to augmenting Paris Principles compliance.

The Working Group therefore recommends that the ICC, relying on the expertise of the SCA, and with the appropriate support of the ICC Regional Chairs and Coordinating Committee, continue to develop its outreach and education strategies to promoting awareness of the ICC accreditation process amongst and beyond the ICC membership. Specifically, the following

outreach strategies proposed by the Working Group should be taken into consideration in achieving this:

- Building onto the agendas of the ICC plenary meetings & regional meetings;
- Engaging and enlarging the roles of ICC Regional Chairs and Regional Coordinators;
- Regular communications through regional and ICC Secretariat (OHCHR) bulletins and the NHRI Forum website;
- Periodic focus groups and roundtables;
- Presentations and workshops;
- Mentorship within the NHRI community;
- Comprehensive plain language guide to the SCA process and General Observations.

5.2 Next steps: request feedback from ICC Bureau

The Bureau Members are requested to send their comments on the proposed recommendations to the Chair of the Working Group, Mr. David Langtry (david.langtry@chrc-ccdp.ca), Deputy Chief Commissioner, Canadian Human Rights Commission, and SCA representative of the Americas, with a copy to Mr. Greg Heesom (gregheesom@asiapacificforum.net), Legal Counsel, Asia Pacific Forum of National Human Rights Institutions.

The feedback received will be incorporated into the Decision Paper on the Review of General Observations that will be presented to the ICC membership at its 25th General Meeting.

6. APPENDICES

Annex A: SCA Discussion Paper: Proposed Review of the General Observations, March 2010.

Annex B: NHRI Evaluations of SCA General Observations – Questionnaire.

ANNEX A

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 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*⁶. 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*.⁷

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

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 Procedure⁸, 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.

⁶ *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.

⁷ Section 5, ICC Statute.

⁸ Sections 6.2 and 6.3, ICC Sub-Committee on Accreditation Rules of Procedure.

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.⁹ 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.¹⁰

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.

⁹ United National Human Rights Commission Resolution 2005/74, 20 April 2005.

¹⁰ This decision was made at the APF 14th General Meeting held in Amman, Jordan, in August 2009.

B.2 Rationale for Discussion Paper

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.¹¹

The ICC Bureau has reiterated this requirement for greater comprehensibility of the accreditation process through its accreditation-focused strategic planning suggestions.¹² 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.

¹¹ 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

¹² 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”.¹³ 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*.

¹³ *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*¹⁴, 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*¹⁵ 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*.¹⁶

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.¹⁷ 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.

¹⁴ *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.

¹⁵ Section 7, ICC Statute.

¹⁶ Section 1, Sub-Committee on Accreditation Rules of Procedure.

¹⁷ 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.

1.3.1 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.

1.3.2 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.¹⁸ 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.

1.3.3 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.

¹⁸ 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 B

NHRI Evaluation of ICC General Observations

SCA Working Group on the Revision of ICC General Observations
June 2010

Background

Objective 5.1 of the ICC's Strategic Plan requires that a review of the organization's accreditation process be undertaken.

A key element in the accreditation process is the development of General Observations. These are intended to clarify the requirements of the *Paris Principles relating to the status of national human rights institutions*, the existing international standards against which all NHRIs are assessed and accredited.

During its first session of 2010, the ICC Sub-Committee on Accreditation (SCA) established a Working Group to review the development of the ICC's General Observations. In accordance with the ICC Strategic Objective 5.1, the outcomes of the review will make recommendations on how to:

- improve the process for drafting General Observations;
- ensure that future General Observations are clear, comprehensive, robust, and relevant; and
- strengthen member's understanding of the accreditation process, and, the application of the Paris Principles and General Observations.

Consultation with Members

In order to undertake its review, the Working Group would like to seek ICC members' views on the Accreditation Process and the General Observations, and on how to improve their development, content and use.

The Working Group has developed the following questionnaire to seek your views on various aspects of the Accreditation Process. Regional representatives, in consultation with the Regional Coordinating Committees, have been requested to facilitate the circulation of the questionnaire, and where possible, to include a session on the Accreditation Process in their next regional meetings.

Documentation

The following documents are provided to assist you in responding to the questionnaire:

- Compilation of SCA Working Methods;
- Discussion Paper on the Proposed Review of General Observations.

What we request of you:

Members are requested to complete the following questionnaire and deliver their responses to:

- their regional SCA member or regional coordinating committee; and
- the SCA Working Group at: sulini.sarugaser@chrc-ccdp.ca.

QUESTIONNAIRE

NHRI Evaluation of SCA General Observations

Name of Institution: _____

A) Context and Background

1. Has your NHRI undergone an ICC accreditation review? If so, when?

B) Understanding of Accreditation Process and General Observations

2. Is your NHRI aware of the requirements of the Paris Principles and the role these play in the Accreditation Process?
3. Is the attached Compilation of SCA Working Methods useful?
4. Has your institution used the attached Guidelines for Accreditation Applications and the Template of the Statement of Compliance in completing your application for ICC accreditation status? Do you have any suggestions to improve these documents?
5. Can you suggest the development of additional reference documents that would help to further clarify the accreditation process?
6. What training does your institution require to better understand the Paris Principles, General Observations and the ICC accreditation process?
7. Would other stakeholders (civil society, treaty bodies, etc.) benefit in such training? If yes, to whom and why?

C) Usefulness and Value of General Observations

8. Do you find the General Observations useful in clarifying the scope of your institution's obligations under the *Paris Principles*?
9. Is the short format in which General Observations are drafted instructive? Would a lengthier explanation be helpful in clarifying their requirements and the context in which they apply?
10. Are some General Observations more relevant to your NHRI than others? If yes, please state which ones and why?
11. Are there any General Observations which are unclear or that you believe may be misunderstood by others? If so, which and why?
12. The SCA will often reference a General Observation that addresses a concern it may have with the NHRI under review. Where reference has been made to a General Observation as part of the review of your institution, how have you made use of this statement in seeking to address the SCA's concern?

13. In the absence of an SCA recommendation, has your institution used the standards articulated in the General Observations to make internal changes or to recommend action by your government to address a potential lack of compliance? If yes, did you find the General Observations to be a helpful instrument in advocating to your government to make the necessary changes?
14. Is there a General Observation or a recommendation issued by the SCA to your institution that, in your view, was not appropriate or is impossible to fulfill within the legal or political system in which your NHRI operates?
15. In your view, what are the key strengths of the existing General Observations?
16. What are the weaknesses of the existing General Observations?

D) Development of General Observations

17. The SCA recently decided to notify ICC members and invite input prior to drafting a General Observation. Do you think this is a positive initiative?
18. Would your NHRI be prepared to contribute to the development of future General Observations?

E) Concluding Remarks

19. Do you have any comments or suggestions to add regarding the usefulness of the existing General Observations, the development of future General Observations and/ or your NHRI's need for greater training on this topic?

Thank you for your contribution to strengthening the ICC accreditation process.

Should you have further questions, please do not hesitate to contact:

- your regional SCA representative;
- your Regional Coordinating Committee representative; or
- the SCA Working Group at: sulini.sarugaser@chrc-ccdp.ca.