

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

Geneva 21 to 23 April 2008

Report and Recommendations of the Sub-Committee on Accreditation

1. BACKGROUND

- 1.1. In accordance with the Rules of Procedure of the International Coordinating Committee of National Institutions for the Protection and Promotion of Human Rights (ICC), the Sub-Committee on Accreditation (the Sub-Committee) has the mandate to consider and review applications for accreditation, re-accreditation and special reviews received by the National Institutions Unit of the Office of the High Commissioner for Human Rights (OHCHR) in its capacity as the ICC Secretariat, and to make recommendations to the ICC members with regard to the compliance of applicant institutions with the Paris Principles. The Sub-Committee mandate is to assess compliance with the Paris Principles in law and in practice.
- 1.2. In accordance with the Sub-Committee Rules of Procedure, the Sub-Committee is composed of representatives of each region: the National Human Rights Institutions (NHRIs) of Germany for Europe (chair), Morocco for Africa (replacing Rwanda)¹, the Republic of Korea for Asia-Pacific and Canada for the Americas. The Sub-Committee convened from 21 to 23 April 2008. OHCHR participated as a permanent observer and in its capacity as ICC Secretariat.
- 1.3. Pursuant to article 3(c) of the Rules of Procedure, the Sub-Committee considered applications for re-accreditation from: Algeria, Ecuador, Guatemala, Malaysia, Mauritius, Niger, Uganda, and Venezuela.
- 1.4. Pursuant to article 3(c) of the Rules of Procedure, the Sub-Committee also considered applications for accreditation from Croatia, Great Britain, Maldives, Timor Leste, and Ukraine.
- 1.5. The Sub-Committee also discussed the re-accreditation of Luxembourg and Sweden and agreed to defer consideration of these applications to the fall 2008 session.
- 1.6. In accordance with the Paris Principles and the ICC Sub-Committee Rules of Procedure, the different classifications² for accreditation used by the Sub-Committee are:
 - A: Compliance with the Paris Principles;
 - B: Observer status – Not fully in compliance with the Paris Principles or insufficient information provided to make a determination;
 - C: Non-compliance with the Paris Principles.

¹ The Sub-Committee notes that for the consideration of the Commission National Consultative de Promotion et Protection des Droits de l'Homme of Algeria, Morocco did not participate in the discussion or the decision. The decision was made by the Sub-Committee with the participation of Rwanda.

² The Sub-Committee notes that it has discontinued the use of the A(R) classification, pending formal adoption of the amendments to the rules of the ICC.

1.7. Following the practice commenced at the meeting of the Sub-Committee in October 2006, the Sub-Committee continued to make General Observations in relation to accreditation. These General Observations have been formulated on common or important interpretative issues and are intended to be guidelines for NHRIs concerning the implementation of the Paris Principles. The list of General Observations is not exhaustive and will continue to evolve as the Sub-Committee further considers other applications. The compilation of all General Observations adopted by the ICC classified according to themes contained in the Paris Principles is attached as Annex 1 to this report. The General Observation developed by the Sub-Committee at its April 2008 session (attached as Annex 2) has yet to be adopted by the ICC. The revised General Observation 1.5 on “Cooperation with other human rights institutions” (attached as Annex 3) has yet to be adopted by the ICC.

Recommendation: The Sub-Committee recommends the adoption of the General Observation attached as Annex 2.

Recommendation: The Sub-Committee recommends the adoption of the revised General Observation attached as Annex 3.

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

1.9. The Sub-Committee notes that in all applications considered reference could be made to General Observation “Interaction with the International Human Rights System” and encourages all NHRIs to interact consistently with the international human rights system (UN Human Rights Treaty Bodies, Special Procedures mandate holders and Human Rights Council, including the UPR), providing information independently of the Government and later ensuring follow up action to recommendations resulting from that system (and to rely on the services of the ICC Representative in Geneva when necessary).

1.10. The Sub-Committee notes that it received the “Guidelines for the Sub-Committee on Accreditation for the application of General Observations” (attached as Annex 4) approved in principle at the 20th session of the ICC in April 2008.

- 1.11. The Sub-Committee notes that when specific issues are raised in its report in relation to accreditation, re-accreditation and special review, NHRIs are required to address these issues in any subsequent application or special review.
- 1.12. In accordance with the ICC Rules of Procedure, the Sub-Committee encourages all accredited NHRIs to inform the ICC at the first available opportunity about circumstances that would negatively affect their ability to meet the standards and obligations of the Paris Principles.
- 1.13. When the Sub-Committee is to consider particular issues within a specified time-frame, the outcome of the review may affect the accreditation status.
- 1.14. As provided for in the “Decision Paper on the Review of ICC Accreditation Procedures for National Human Rights Institutions (NHRI) March 2008” (attached as Annex 5) adopted by the ICC at its 20th session in April 2008 (Decision Paper), the results of the accreditation review will first be communicated to the affected NHRI with a time frame of 30 days to respond to the issues addressed by the Sub-Committee members. At the expiration of the 30 days, the report will be sent to the ICC voting members.
- 1.15. As provided for in the Decision Paper, the recommendations from the April 2008 session of the Sub-Committee will be communicated to all ICC voting members, and those members will be asked to adopt them by email within 20 days. All approved recommendations are final decisions. Unapproved decisions are referred for consideration at the next ICC meeting.
- 1.16. As provided for in the Decision Paper, in cases where the Sub-Committee considers a recommendation that would serve to remove accredited status from an applicant institution, the applicant institution is informed of this intention and given the opportunity to provide in writing, within one year of such notice, the documentary evidence deemed necessary to establish its continued conformity with the Paris Principles. The concerned institution retains its “A” status during this period.
- 1.17. The Sub-Committee continued to consult with relevant NHRIs and regional coordinating bodies, whenever necessary. This procedure was applied in several cases during the present session. Prior to the session, all concerned NHRIs were requested to provide a name and phone number in case the Sub-Committee 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 Sub-Committee would like to acknowledge the high degree of support and professionalism of the staff of the ICC Secretariat (OHCHR National Institutions Unit) which has been essential for the Sub-Committee to conduct its activities.

2. ADOPTION OF NEW PROCEDURES

- 2.1. In the ongoing effort to be more transparent, the Sub-Committee continued to develop new procedures.
- 2.2. The Sub-Committee agreed, commencing with its next session, to share the summaries prepared by the Secretariat with each NHRI before the consideration of its application and to give that NHRI one week to comment on the summary. All comments received, together with

the summaries, are to be then sent to the members of the Sub-Committee. Once the recommendations of the Sub-Committee are adopted by the ICC according to the procedures, the summaries and the comments will be posted on the NHRI Forum (www.nhri.net). The summaries are prepared only in English, due to current financial constraints.

2.3. The Sub-Committee also considers information received from civil society. The Sub-Committee agreed to share that information with the concerned NHRIs.

3. SPECIFIC RECOMMENDATIONS – RE – ACCREDITATION APPLICATIONS

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

Recommendation: The Sub-Committee informs the Commission of its intention to recommend to the ICC **status B**, and gives the Commission 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 Commission retains its “A” status during this period.

The Sub-Committee notes the following:

- 1) The Commission has not provided a current annual report but only a compilation of activities covering the period from 2002 to 2004.
- 2) The Sub-Committee refers to General Observation “Establishment of national institutions” to stress the importance of establishing national institutions in a constitutional or legal text.
- 3) The Chair and the members of the Commission are appointed and dismissed without a clear and transparent process. The Sub-Committee refers to General Observation “Selection and appointment of the governing body”.
- 4) The Sub-Committee encourages the Commission to interact effectively with the United Nations Human Rights system, especially the Treaty Bodies and the following up of the recommendations at the national level, in line with General Observation “Interaction with the International Human Rights System”.

The Sub-Committee will provide the summary prepared by the Secretariat to the Commission.

3.2. Ecuador: Defensoría del Pueblo

Recommendation: The Sub-Committee informs the Defensoría of its intention to recommend to the ICC **status B**, and gives the Defensoría 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 Defensoría retains its “A” status during this period.

The Sub-Committee notes the following:

- 1) It refers to General Observation “Cooperation with other human rights institutions” and stresses the need for the NHRI to cooperate with other institutions, such as NGOs, established for the purpose of promoting or protecting human rights.
- 2) It also refers to General Observation “Interaction with the International Human Rights System” and stresses that the Defensoría should generally make an input to and participate in these human rights mechanisms and following up at the national level to the recommendations resulting from the international human rights system.

The Constitution of Ecuador is currently under review. This revision should in no way negatively affect the independence and effectiveness of the Defensoría del Pueblo of Ecuador.

The Sub-Committee will provide the summary prepared by the Secretariat to the Defensoría del Pueblo of Ecuador.

3.3. Guatemala: Procuraduría de los Derechos Humanos de Guatemala

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

The Sub-Committee notes the following:

- 1) It refers to General Observation “Interaction with the International Human Rights System”.
- 2) The Procurador should not be required to obtain prior authorization from a judge in order to carry out investigations and should have unannounced and free access to all public premises.

The enabling legislation does not provide for re-election of the Procurador. However, the current Procurador was elected a second time.

3.4. Malaysia: National Human Rights Commission of Malaysia (SUHAKAM)

Recommendation: The Sub-Committee informs the Commission of its intention to recommend to the ICC **status B**, and gives the Commission 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 Commission retains its “A” status during this period.

The Sub-Committee notes the following:

- 1) The independence of the Commission needs to be strengthened by the provision of clear and transparent appointment and dismissal process in the founding legal documents, more in line with the Paris Principles. The Sub-Committee refers to General Observation “Selection and appointment of the governing body”.
- 2) With regard to the appointment, the Sub-Committee notes the short term of office of the members of the commission (two years). It refers to General Observation “Guarantee of tenure for members of governing bodies”.
- 3) It further refers to General Observation “Ensuring pluralism” to highlight the importance of ensuring the representation of different segments of society and their involvement in suggesting or recommending candidates to the governing body of the Commission.
- 4) The Sub-Committee refers to General Observation “Interaction with the International Human Rights System”.

The Sub-Committee will provide the summary prepared by the Secretariat to the Commission.

3.5. Mauritius: National Human Rights Commission

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

The Sub-Committee notes the following:

- 1) It refers to the General Observation “Selection and appointment of the governing body”, in particular to the importance of having in the founding legal documents a broad and formal consultation process in the selection and appointment of members.
- 2) It also refers to General Observation “Guarantee of tenure for members of governing bodies” to highlight the need to entrench transparent and objective criteria for the dismissal of the Commission members in the founding legal documents.
- 3) It further refers to General Observation “Staffing by secondment” to highlight the importance of amending the legislation to allow the Commission to recruit its own staff.

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

3.6. Niger: Commission Nationale des Droits de l’Homme et des Libertés Fondamentales

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

The Sub-Committee notes the following:

- 1) The need for additional financial resources. It refers to General Observation “Adequate funding”.
- 2) It also refers to General Observation “Encouraging ratification or accession to international human rights instruments”. The Sub-Committee therefore encourages the entrenchment of this function in the enabling legislation of the National Institution to ensure effective protection of human rights.
- 3) It further refers to General Observation “Interaction with the International Human Rights System”.
- 4) It urges the CNDHLF to comply with Article 20 of Decree No 99-530/PCRN/MJDH of 21 December 1999 by establishing regional antennas of the CNDHLF.

3.7. Uganda: Human Rights Commission

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

The Sub-Committee notes the following:

- 1) It encourages the Commission to issue public reports on all delicate and critical human rights incidents within the country.

3.8. Venezuela: Defensoría del Pueblo

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

The Sub-Committee notes the following:

- 1) It urges the Defensoría del Pueblo of Venezuela to strengthen its efforts to encourage ratification or accession to international human rights instruments and refers to General Observation “Encouraging ratification or accession to international human rights instruments”.
- 2) It also encourages the Defensoría to strengthen its engagement with civil society and refers to General Observation “Cooperation with other human rights institutions”.
- 3) It encourages the Defensoría to continue to interact with the International Human Rights System and stresses the importance of following up at the national level to the recommendations resulting from the international human rights system.

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

The Sub-Committee agreed to defer the consideration of the re-accreditation of the Commission Consultative des Droits de l’Homme of Luxembourg until the fall 2008 session of the Sub-Committee, pending the adoption of the new law regarding the national Institution. The Sub-Committee refers to General Observation “Deferral of re-accreditation applications”.

3.10. Sweden: Ombuds-Institutions of Sweden

In support of the ongoing effort to merge the existing human rights institutions in Sweden, the Sub-Committee agreed at its October 2007 session to defer the consideration of the re-accreditation of the national human rights institution of Sweden until the current Sub-Committee session. The NHRI of Sweden requested a further deferral. The Sub-Committee decided to defer the re-accreditation application to its fall 2008 session. According to General Observation “Deferral of re-accreditation applications”, if the documents required supporting the re-accreditation of the NHRI of Sweden are not received before the fall 2008 session of the Sub-Committee, the accreditation status of the NHRI of Sweden will lapse.

4. SPECIFIC RECOMMENDATIONS – NEW ACCREDITATION APPLICATIONS

4.1. Croatia: Ombudsman of the Republic of Croatia

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

The Sub-Committee notes the following:

- 1) It highlights the importance for the Ombudsman to cooperate with the other Ombuds-institutions to ensure coherence and effectiveness of the national human rights protection system.
- 2) It refers to General Observation “Human rights mandate” and urges the mandate of the Ombudsman to be broadened to include promotion of human rights.
- 3) It also refers to General Observation “Adequate funding”, in particular the importance of having sufficient and sustainable funding for the realisation of the organization’s mandate.

- 4) The Sub-Committee encourages the Commission to interact effectively with the United Nations Human Rights system, in line with General Observation “Interaction with the International Human Rights System”.
- 5) It further refers to General Observation “Ensuring pluralism”, in particular with regard to ethnic minorities.
- 6) It encourages the Ombudsman to strengthen the accessibility of the institution by opening regional offices, in conformity with article 3 of its Standing Orders.

4.2. Maldives: Human Rights Commission

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

The Sub-Committee notes that the founding legal documents of the Human Rights Commission of the Maldives provide that all members of the Commission must be Muslim. The Sub-Committee recommends that this requirement be removed in order for the Commission to be considered to be compliant with the Paris Principles.

The Sub-Committee notes that in practice the Commission has been generally effective in fulfilling its mandate to promote and protect human rights.

The Sub-Committee also notes the following:

- 1) It refers to General Observation “Human Rights mandate”, in particular to expand the mandate of the Commission to cover all human rights and fundamental freedoms.
- 2) It also refers to General Observations “Selection and appointment of the governing body” and “Guarantee of tenure for members of governing bodies”, in particular the need to ensure a substantiated and transparent dismissal procedure in the founding legal documents.
- 3) The Sub-Committee encourages the Commission to interact effectively with the United Nations Human Rights system, in line with General Observation “Interaction with the International Human Rights System”.
- 4) The Commission lacks sufficient office space which limits its ability to hire staff to fill the existing high vacancy.

4.3. Timor Leste: Provedoria for Human Rights and Justice

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

The Sub-Committee notes the following:

- 1) It refers to General Observation “Adequate funding”, in particular to allocation of funds for adequate accommodation, and ensuring the gradual and progressive realization of the improvement of the organization’s operations and the fulfilment of its mandate.
- 2) It also refers to General Observation “NHRIs during the situation of a coup d’etat or a state of emergency”, in particular highlighting the importance for the Provedoria to continue to be vigilant and independent in the exercise of its mandate.
- 3) The Sub-Committee encourages the Commission to interact effectively with the United Nations Human Rights system, in line with General Observation “Interaction with the International Human Rights System”.

- 4) The Provedoria should not be required to provide prior written notice to access, inspect and examine any premises, documents, equipment and assets (per article 42 of the Law 7/2004). The Provedoria should have unannounced and free access to all public premises.

4.4. Ukraine: Ukrainian Parliament Commissioner for Human Rights

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

The Sub-Committee notes the following:

- 1) The Commission failed to submit a recent annual report as part of the accreditation requirements. The annual report provided to the Sub-Committee by the Commission is for the year 2004.
- 2) The Commission failed to submit a copy of its budget as part of the accreditation requirements. The Sub-Committee refers to General Observation "Application process", in particular subparagraph c).
- 3) It also refers to General Observation "Interaction with the International Human Rights System", in particular highlighting the importance of engaging with the Treaty Bodies in a fully independent manner.
- 4) It further refers to General Observation "Selection and appointment of the governing body" and General Observation "Ensuring pluralism" to ensure that social forces (of civilian society) are engaged in the process.

4.5. Great Britain: Equality and Human Rights Commission

Recommendation: The Sub-Committee recommends that consideration of the application for accreditation of the Commission be deferred to the Sub-Committee spring 2009 session.

The Equality and Human Rights Commission was established in October 2007 and has been operational for six months. The effectiveness of the Commission and its compliance with the Paris Principles could not be determined in the present session.

The Sub-Committee refers to General Observation "More than one national human rights institution in a state" developed by the Sub-Committee at its April 2008 session.

The Sub-Committee will provide the summary prepared by the Secretariat to the Equality and Human Rights Commission.

ANNEX 1

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

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 fulfillment of their mandate.

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

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

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

2.8 Full-time Members:

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

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

2.9 Guarantee of tenure for members of governing bodies

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

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

3. Methods of operation

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

5. Additional issues

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

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

6. Procedural issues

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

- a) Deadlines for applications will be strictly enforced;
- b) Where the deadline for a re-accreditation application is not met, the Sub-Committee will recommend that the accreditation status of the National Institution be suspended until the application is considered at the next meeting;

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

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

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

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

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

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

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

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

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

Adopted by International Coordinating Committee of National Human Rights Institutions for the Promotion and Protection of Human Rights (ICC) at its 20th session in Geneva, 14-18 April 2008.

Geneva, April 2008

ANNEX 2

General Observation developed by the Sub-Committee at its April 2008 session

More than one national human rights 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 Rule 3 (b) of the ICC rules of procedure provide for only one speaking right, one voting right and only one is eligible for election as a member of the ICC bureau.

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

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

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

ANNEX 3

General Observation revised by the Sub-Committee at its April 2008 session

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.

ANNEX 4

Guidelines for the Sub-Committee on Accreditation for the application of the General Observations

Some Institutions seeking re-accreditation as A status NHRIs, or institutions seeking such accreditation for the first time, are operating in difficult social, political or economical circumstances. This is particularly the case in countries emerging from conflict, or where the international human rights framework is not generally accepted. In these exceptional circumstances, it may not be possible for an institution to fully meet each of the Paris Principles.

Therefore, when assessing institutions for accreditation or re-accreditation, the ICC Sub-Committee should consider the circumstances in which the institution is operating, and should apply the General Observations flexibly, combining the need for inclusiveness and diversity with the need to maintain standards.

Examples of such situations may be where an institution is reliant largely on funding from international donors rather than its own government, or where an institution's geographical scope covers a part of a nation rather than the whole nation. This situation may not change quickly, or at all, so can still be relevant when an institution seeks re-accreditation as well as the initial accreditation.

To achieve A status, an institution should meet, to the maximum extent possible, all of the Paris Principles. In its assessment, the ICC Sub-Committee should consider each situation within its local context in order to enable institutions operating in difficult circumstances into its membership as A status as this:

- provides the institution with the benefit of international engagement and support to learn from others and develop;
- provides the institution with the status and support of the United Nations;
- contributes to the diversity of the ICC;
- contributes to the ICC's function to support the establishment of NHRIs.

ANNEX 5

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

March 2008

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

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Background

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

Working Group Membership

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

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

Discussion Paper

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

Presentation to the ICC

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

Challenges to Adverse Accreditation Recommendations

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

Decision Paper

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

Part I: A Principled Approach

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

Guidelines for Accreditation Process

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

Evolving Role of NIs

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

NIs in UN Human Rights Fora

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

Renewed Accreditation Process

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

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

1. Transparency
2. Rigour
3. Independence

Transparency

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

Rigour

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

Independence

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

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

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

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

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

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

Proposed Action

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

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

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

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

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

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

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

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

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

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

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

Proposed Action

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

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

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

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

Part III: The Accreditation Process

Issue 3: Documents supporting accreditation

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

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

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

Proposed Action

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

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

Issue 4: Sub-Committee meeting schedules and related issues

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

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

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

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

Proposed Action

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

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

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

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

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

Issue 5: Accreditation categories

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

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

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

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

Proposed Action

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

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

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

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

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

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

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

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

Issue 6: The re-accreditation process

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

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

The Sub-Committee, in section 6.1 of its General Observations³, delivered to the 19th Session of the Annual Meeting of the ICC, recommended a process for handling the deferral of re-accreditation. It recommended that deferrals only be allowed on receipt of a written request and then only if in the view of the ICC Chairperson the justifications provided are “compelling and exceptional”. It also set a time limit of one year for the deferral after which, if the application and required documentation are not submitted, the Institution would be suspended. Finally, it indicated that re-accreditation applicants that do not apply and submit their application in time or at all will be suspended for up to one year; if the

³ Please see Issue 10 for a discussion on Sub-Committee General Observations.

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

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

Proposed Action

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

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

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

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

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

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

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

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

Issue 7: Responsibility to consult applicant Institutions⁴

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

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

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

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

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

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

⁴ This issue should not be confused with the requirement to “inform applicant institutions of the decisions taken and their rationale” or to carry out further consultations with an institution that has been denied accreditation, both of which are clear.

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

Proposed Action

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

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

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

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

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

Issue 8: The process of challenging adverse accreditation recommendations

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

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

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

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

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

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

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

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

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

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

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

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

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

To be consistent with the General Observations⁵ of the Sub-Committee, there should be a strict time limit during which the appellant institution must satisfy the 16 voting members of the ICC that it complies with the *Paris Principles*. The Working Group suggests that an Institution have one (1) month in which to submit supportive documentation to the Chair of the ICC to support its challenge of the adverse accreditation recommendation.

Proposed Action

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

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

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

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

The Working Group agrees that it is important that the Rules of Procedure specifically deal with the issue of de-certification and the status of members during review or suspension. The following possibilities regarding the status of an Institution during re-accreditation or review are set out in the Sub-Committee's General Observations⁶ delivered at the 19th Session of the Annual Meeting of the ICC:

Deferral of consideration of status:

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

Suspension of status:

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

Lapse of status:

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

Review of status:

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

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

⁶ Please see Issue 10 for a discussion on Sub-Committee General Observations.

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

Proposed Action

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

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

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

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

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

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

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

Issue 10: Sub-Committee General Observations

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

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

Purpose

The Sub-Committee on Accreditation is mandated to assess whether an applicant institution is in conformity with the Paris Principles⁷. Therefore identifying concerns that it has about the non-compliance of NHRIs with the Paris Principles has always been, and continues to be, considered an exercise internal to the Sub-Committee's working methods. The General Observations are a formulation of the common or important interpretative issues and are intended to be focused guidelines for NHRIs regarding: (i) the implementation of the Paris Principles, to ensure full compliance; or (ii) the ICC accreditation application process.

Force & Effect

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

Proposed Action

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

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

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

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

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

⁷ Art. 1 Rules of Procedure for the Sub-Committee on Accreditation

compliance with the standards articulated in the General Observations;

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

Part IV: A Normative Framework (Criteria for Accreditation)

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

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

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

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

Proposed Action

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

APPENDIX

ANNEX I

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

RULES OF PROCEDURE

PREAMBLE:

The International Co-ordinating Committee is a representative body of National Human Rights Institutions established for the purpose of creating and strengthening National Human Rights Institutions which are in conformity with the Paris Principles⁸. It performs this role through encouraging international co-ordination of joint activities and co-operation among these National Human Rights Institutions, organising International Conferences, liaison with the United Nations and other international organisations and, where requested, assisting governments to establish a National Institution.

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

1. Name

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

2. Functions

The functions of the ICC are:

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

⁸ Commission on Human Rights resolution 1992/54 of 3 March 1992, annex (*Official Records of the Economic and Social Council, 1992, Supplement No. 2 (E/1992/22)*, chap II, sect. A); General Assembly resolution 48/134 of 20 December 1993, annex.

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

3. Membership of the Group of National Institutions

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

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

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

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

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

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

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

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

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

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

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

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

4. Regional Groupings of Members

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

5. Membership of the ICC

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

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

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

7. Liaison with Other Human Rights Institutions and NGOs

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

8. Meetings

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

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

9. Conduct of Business

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

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

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

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

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

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

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

10. Further Procedure

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

11. Amendment of Rules of Procedure

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

ADOPTED 15 APRIL 2000

AND AS AMENDED 13 APRIL 2002

ANNEX II

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

1. Mandate

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

2. Composition of the Sub-Committee

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

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

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

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

3. Functions

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

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

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

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

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

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

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

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

4. Procedures

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

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

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

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

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

5. Accreditation Classifications

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

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

6. Report and Recommendations

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

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

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

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

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

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

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