

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

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

Geneva, 13-16 May 2013

SUMMARY OF RECOMMENDATIONS

<u>2. Accreditation (Art. 10 of the ICC Statute)</u>
2.1 <u>Haiti: Office for the Protection of Citizens (OPC)</u> Recommendation: The SCA recommends that the consideration of the application of the OPC be deferred to its second session in 2013.
<u>3. Re-Accreditation (Art. 15 of the ICC Statute)</u>
3.1 <u>Armenia : Human Rights Defender of the Republic of Armenia (HRDA)</u> Recommendation: The SCA recommends that the HRDA be re-accredited A status .
3.2 <u>Croatia: Ombudsman of the Republic of Croatia (ORC)</u> Recommendation: The SCA recommends that the Ombudsman be re-accredited A status .
3.3 <u>Egypt: National Council for Human Rights (NCHR)</u> Recommendation: The SCA recommends that consideration of the re-accreditation of the NCHR be deferred to its second session in 2013 in order to consider the new law once adopted and the reports provided by the NCHR during the current session.
3.4 <u>France: National Consultative Commission on Human Rights (NCCHR)</u> Recommendation: The SCA recommends that CNCDH be re-accredited A status .
3.5 <u>Georgia: Office of the Public Defender (OPD)</u> Recommendation: The SCA recommends that the OPD be re-accredited A status .
3.6 <u>Guatemala: Procurador de los Derechos Humanos (PDH)</u> Recommendation: The SCA recommends that the PDH be re-accredited with A status .
3.7 <u>Malawi: Malawi Human Rights Commission (MHRC)</u> Recommendation: The SCA recommends that consideration of the reaccreditation of the MHRC be deferred to its second session of 2013 in order to allow it to consider the new law once adopted.
3.8 <u>Rwanda: Commission Nationale des Droits de l'Homme (CNDH)</u> Recommendation: The SCA recommends that the NCHR be re-accredited A status .
3.9 <u>Togo: National Human Rights Commission (NHRC)</u> Recommendation: The SCA recommends that the CNDH be re-accredited A status .

<p>3.10 <u>Uganda: Human Rights Commission (UHRC)</u> Recommendation: The SCA recommends that the UHRC be reaccredited with A status.</p>
<p>3.11 <u>Venezuela: Defensoría del Pueblo (DPV)</u> Recommendation: The SCA recommends that the DPV be re-accredited A status.</p>
<p>4. Review (Article 16.2 of the ICC Statute)</p>
<p>4.1 <u>Nepal: National Human Rights Commission (NHRC)</u> Recommendation: The SCA recommends that the special review of the NHRC be deferred to its second session of 2013.</p>

Report and Recommendations of the Session of the SCA on 13-16 May

1. BACKGROUND

- 1.1. In accordance with the Statute (Annex I) of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), the SCA has the mandate to consider and review applications for accreditation, reaccreditation and special or other reviews received by the National Institutions and Regional Mechanisms Section (NIRMS) of the Office of the United Nations High Commissioner for Human Rights (OHCHR) in its capacity as the ICC Secretariat, and to make recommendations to the ICC Bureau members with regard to the compliance of applicant institutions with the Paris Principles (Annex II). The SCA assesses compliance with the Paris Principles in law and in practice.
- 1.2. In accordance with the SCA Rules of Procedure, the SCA is composed of NHRI representatives from each region: Canada for the Americas, Mauritania for Africa, Qatar for Asia-Pacific (Chair) and Germany for Europe.
- 1.3. The SCA convened from 13-16 May 2013. OHCHR participated as a permanent observer and in its capacity as ICC Secretariat. In accordance with established procedures, regional coordinating committees of NHRIs were invited to attend as observers. The SCA welcomed the participation of representatives from the Secretariat of the Asia Pacific Forum of NHRIs, European Group, and the Network of NHRIs of the Americas.
- 1.4. Pursuant to article 10 of the Statute, the SCA considered an application for accreditation from the NHRI of Haiti.
- 1.5. Pursuant to article 15 of the Statute, the SCA also considered applications for re-accreditation from the NHRIs of Armenia, Croatia, Egypt, France, Georgia, Guatemala, Malawi, Rwanda, Toqo, Uganda and Venezuela.
- 1.6. Pursuant to article 16.2 of the Statute, the SCA reviewed certain issues regarding the NHRI of Nepal.
- 1.7. In accordance with the Paris Principles and the ICC SCA Rules of Procedure, the classifications for accreditation used by the SCA are:
 - A:** Compliance with the Paris Principles;
 - B:** Not fully in compliance with the Paris Principles or insufficient information provided to make a determination;
 - C:** Non-compliance with the Paris Principles.
- 1.8. The General Observations (Annex III), as interpretative tools of the Paris Principles, may be used to:
 - a) Instruct institutions when they are developing their own processes and mechanisms, to ensure Paris Principles compliance;

- b) Persuade domestic governments to address or remedy issues relating to an institution's compliance with the standards articulated in the General Observations;
 - c) Guide the SCA in its determination of new accreditation applications, re-accreditation applications or other review:
 - i) If an institution falls substantially short of the standards articulated in the General Observations, it will be open for the SCA to find that it was not Paris Principle compliant.
 - ii) If the SCA has noted concern about an institution's compliance with any of the General Observations, it may consider what steps, if any, have been taken by an institution to address those concerns in future applications. If the SCA is not provided with proof of efforts to address the General Observations previously made, or offered a reasonable explanation why no efforts had been made, it would be open to the SCA to interpret such lack of progress as non-compliance with the Paris Principles.
- 1.9.** The SCA has also developed General Observations on NHRIs serving as National Monitoring/Preventive Mechanisms; the quasi-judicial competency of NHRIs; and assessing the performance of NHRIs. These were approved by the ICC Bureau at its meeting in Geneva on 6-7 May 2013 (Annex IV).
- 1.10.** In May 2011, the ICC formed a Working Group to review the existing General Observations in order to improve their relevance and clarity. Following consultation with the ICC membership, the revised General Observations were approved by the ICC Bureau at its meeting in Geneva on 6-7 May 2013 (Annex V).
- 1.11.** The General Observations in Parts 1 through 5 have now been regrouped into two categories: "Essential requirements of the Paris Principles" and "Practices that directly promote Paris Principles compliance".
- 1.12.** The General Observations in Part 6 (Procedural issues) are being reviewed and will be circulated to the ICC membership for comment.
- 1.13.** Due to resource restrictions the SCA recommends that NHRIs accredited with B status no longer be required to submit an application for ICC re-accreditation on a 5-year cyclical basis. Pursuant to Rule 16.1 of the Statute, a B-institution will be reviewed when its circumstances have changed significantly.
- 1.14.** The SCA notes that when specific issues are raised in its report in relation to accreditation, re-accreditation, or special reviews, NHRIs are required to address these issues in any subsequent application or other review.
- 1.15.** Pursuant to Article 16.1 of the Statute, all accredited NHRIs are required to inform the ICC Bureau at the first available opportunity about circumstances that could negatively affect their ability to meet the standards and obligations of the Paris Principles.

1.16. Pursuant to Article 12 of the Statute, where the SCA comes to an accreditation recommendation, it shall forward that recommendation to the ICC Bureau whose final decision is subject to the following process:

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

1.17. At each session the SCA conducts a teleconference with every NHRI. It may also consult with and seek further information from NHRIs where necessary. In addition, OHCHR desk officers and, as appropriate, OHCHR field officers were available to provide further information, as needed.

1.18. The SCA acknowledges the high degree of support and professionalism of the staff of the ICC Secretariat (OHCHR National Institutions and Regional Mechanisms Section).

1.19. The SCA shared the summaries prepared by the Secretariat with the concerned NHRIs before the consideration of their applications and were given one week to provide any comments on them. Once the recommendations of the SCA are adopted by the ICC Bureau, the summaries, comments and statements of compliance are placed on the ICC website (<http://nhri.ohchr.org/>). The summaries are only prepared in English, due to financial constraints.

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

2. SPECIFIC RECOMMENDATIONS – ACCREDITATION APPLICATIONS (Art. 10 of the ICC Statute)

2.1 Haiti: Office for the Protection of Citizens (OPC)

Recommendation: The SCA recommends that the consideration of the application of the OPC be **deferred** to its second session in 2013.

The SCA expresses appreciation for the significant role played by the OPC in Haitian society in particularly difficult circumstances, and praises the work undertaken by the OPC in the aftermath of the January 2010 earthquake.

The SCA commends the OPC for successfully advocating for a significantly expanded mandate through substantial amendments made to its enabling legislation to strengthen its status. This includes the statement in Art. 3(1) that ‘the OPC is a national institution for the promotion and protection of human rights as provided under the Paris Principles’.

The SCA notes that the current enabling law came into force on 20 July 2012, and that the OPC has been operating effectively as the national human rights institution under its expanded mandate.

The SCA further notes the significant improvements made in the OPC’s funding, and that the OPC is proceeding on a timely basis to seek to have a Deputy appointed and to hire a Director General.

To assess the operational effectiveness of an NHRI, the SCA requires a new NHRI, or one that has recently been provided with a significantly broadened mandate, to provide a formal report on at least one year’s activities. As the OPC has been in operating with a considerably expanded mandate for less than one year, and the SCA recommends deferral to its November 2013 session. It requests the OPC to provide a formal report on its activities for the period beginning July 2012 to the present. The SCA refers the OPC to General Observation 6.7.

3. SPECIFIC RECOMMENDATIONS - RE-ACCREDITATION APPLICATIONS (Art. 15 of the ICC Statute)

3.1 Armenia: Human Rights Defender of the Republic of Armenia (HRDA)

Recommendation: The SCA recommends that the HRDA be re-accredited **A status**.

The SCA acknowledges the improvement in the work of the National Preventive Mechanism (NPM) and encourages the HRDA to continue efforts to strengthen its relationship with civil society.

The SCA notes:

1. Adequate Funding

To function effectively, a National Human Rights Institution must be provided with an appropriate level of funding in order to guarantee its independence. It must also have the ability to freely determine its priorities and activities and to allocate funding accordingly. In particular, adequate funding should, to a reasonable degree, ensure the gradual and progressive realisation of the improvement of the Institution’s operations and the fulfilment of its mandate.

The SCA encourages the HRDA to advocate for sufficient and sustainable State funding. This should include adequate funding for the continued operation of its regional offices and the NPM.

The SCA refers to Paris Principle B.2 and to its General Observation 1.10 on 'Adequate funding of national human rights institutions' and to General Observation 2.10 on 'Assessing national human rights institutions as national preventive and national monitoring mechanisms'.

2. Annual and Thematic Reports

Annual, special and thematic reports serve to highlight key developments in the human rights situation in a country and provide a means by which a National Institution can make recommendations to, and monitor respect for human rights, by government. The national institution is encouraged to table all reports in Parliament, including reports on politically sensitive issues, to circulate them widely and to promote their discussion and consideration by the State in a timely fashion. The national institution is encouraged to monitor and report on the implementation of recommendations by the State.

The SCA refers to Paris Principle A.3 and to its General Observation 1.11 on "Annual and thematic reports".

3.2 Croatia: Ombudsman of the Republic of Croatia (ORC)

Recommendation: The SCA recommends that the Ombudsman be re-accredited **A status**.

The SCA notes with appreciation the extensive efforts that have been made to address its concerns raised in April 2008. It applauds, in particular, the Constitutional amendments and adoption of legislation expanding the ORC's mandate and designating it as the National Preventive Mechanism against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment. The SCA commends the ORC's efforts to strengthen its relationship with civil society and to increase its interaction with the international human rights system.

The SCA notes:

1. Adequate Funding

The SCA remains concerned that recent austerity measures cutting the ORC's budget has required it to undertake intensive fundraising efforts to mobilize the resources necessary to implement its planned promotion and protection activities, and fulfil its role as NPM.

The SCA highlights that to function effectively, a National Human Rights Institution must be provided with an appropriate level of funding in order to guarantee its independence. It must also have ability to freely determine its priorities and activities, and to allocate funding accordingly. In particular, adequate funding should, to a reasonable degree, ensure the gradual and progressive realisation of the improvement of the Institution's operations and the fulfilment of its mandate.

The SCA encourages the ORC to advocate for sufficient and sustainable State funding. This should include adequate funding for accessibility and new functions flowing from the broadening of its mandate.

The SCA refers to Paris Principle B.2 and to its General Observation 1.10 on 'Adequate funding of National Human Rights Institutions'.

2. Accessibility

The SCA notes that the ORC's offices are only based in Zagreb. Although the SCA appreciates the action taken by the ORC to enhance its accessibility by visiting areas outside the capital city, it recommends that regional offices be established to assist in discharging its functions.

The SCA highlights that ensuring the accessibility of the Institution is particularly important for the most vulnerable sections of society, who would otherwise have particular difficulty bringing attention to any violation of their human rights. As many vulnerable persons may be geographically remote from major cities, establishing a regional presence increases accessibility. It is essential that where regional offices exist, they are resourced to function effectively.

3. Encouraging ratification or accession to international human rights instruments

The new legislation of the ORC does not provide for a specific mandate to encourage the ratification and implementation of international human rights standards. The SCA acknowledges that the ORC's mandate makes general reference to, 'promote the alignment of legislation with international and European standards...' It further notes the proactive role taken by the ORC to encourage the State to adopt and ratify the Optional Protocol on Economic, Social and Cultural Rights.

The SCA encourages the ORC to advocate for the entrenchment of this function in its legislation and refers to Paris Principle A3(b) and (c) and General Observation 1.3 on 'Encouraging ratification or accession to international human rights instruments'.

3.3 Egypt: National Council for Human Rights (NCHR)

Recommendation: The SCA recommends that consideration of the re-accreditation of the NCHR be deferred to its second session in 2013 in order to consider the new law once adopted and the reports provided by the NCHR during the current session.

The SCA welcomes the entrenchment of the NCHR in the new Constitution, adopted in December 2012, and the development of a new draft enabling law for the NCHR.

The SCA commends the NCHR on its response to recommendations arising from the SCA's November 2012 session and in particular the changes the NCHR has made to the draft legislation currently before the Shura Council. This includes extending members' term of office, granting immunity from prosecution, inserting grounds and process for dismissal of members, and providing for access to places of detention and confinement.

The SCA notes however that a key recommendation has not been specifically addressed in the amended law, namely, the inclusion of a detailed merit-based selection process

including criteria that require candidates to have appropriate skills, qualification and experience relevant to the promotion and protection of human rights.

In addition, the SCA had highlighted that election as a member of Parliament or membership of a political party is not, in itself, a relevant criteria for the selection of members to the governing body of an NHRI. It noted that such membership should be avoided in order to ensure both the actual and perceived independence of the NCHR, which is a fundamental requirement in the Paris Principles. The SCA notes that the proposed amendments to the selection process do not specifically exclude the appointment of such members.

The SCA recommends the NCHR consider such amendments and refers the NCHR to General Observation 2.2 on “Selection and appointment of the governing body”.

The SCA acknowledges the receipt of extensive documentation as requested by the SCA during the session, and will undertake an assessment of these documents at its next session.

Despite the challenging context in which the NCHR is functioning, the SCA encourages it to continue its activities in a manner which reflects its independence, in law and in practice, as required by Paris Principles B.1 and B.3. This pertains especially to the investigation of alleged human rights violations, particularly torture, forced disappearances and violence

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

3.4 France: National Consultative Commission on Human Rights (CNCDH)

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

The SCA commends the CNCDH for responding to the majority of its concerns expressed at its re-accreditation in October 2007.

The SCA notes:

1. Human Rights Mandate

All National Human Rights Institutions should be legislatively mandated with specific functions to both promote and protect human rights. The ‘protection’ functions have been defined in General Observation 1.2 as those that address and seek to prevent actual human rights violations. Such functions include monitoring, inquiring, investigating and reporting on human rights violations, and may include individual complaint handling.

The SCA is of the view that a National Institution’s mandate should be interpreted in a broad, liberal and purposive manner to promote a progressive definition of human rights which includes all rights set out in international, regional and domestic instruments.

The SCA notes that Article 1 of the CNCDH’s enabling legislation [Loi no. 2007-292 du 5 mars 2007] states:

“La Commission nationale consultative des droits de l’homme assure, auprès du

Gouvernement, un rôle de conseil et de proposition dans le domaine des droits de l'homme, du droit international humanitaire et de l'action humanitaire. Elle assiste le Premier ministre et les ministres intéressés par ses avis sur toutes les questions de portée générale relevant de son champ de compétence tant sur le plan national qu'international. Elle peut, de sa propre initiative, appeler publiquement l'attention du Parlement et du Gouvernement sur les mesures qui lui paraissent de nature à favoriser la protection et la promotion des droits de l'homme.”

The SCA understands this provision invests the CNCDH with powers, among others, to advise the Parliament and Government publicly on the protection and promotion of human rights. The SCA acknowledges that the CNCDH fulfills its protection mandate through, for example, the review of and advice on draft legislation; publishing reports on national human rights issues; and interacting with international human rights mechanisms, including treaty body reporting and the submission of amicus curiae briefs to competent courts. The SCA encourages the CNCDH to broaden its activities in its protection mandate.

The SCA encourages the CNCDH to advocate for amendments to its law that provide it with the powers necessary to fulfill a broad protection mandate. It is acknowledged that such action may have staffing and resource implications for the National Institution.

The SCA refers to Paris Principles A.1 and A.2 and to its General Observation 1.2 on 'Human rights mandate'.

2. Selection and Appointment

Article 5 of Decree no. 2007-1137 specifies that the members of the CNCDH are appointed by decision of the Prime Minister after seeking the opinion of an Independent Committee. The SCA emphasizes the requirement for a clear, transparent and participatory selection process that promotes merit based selection, ensures pluralism and promotes the independence of, and public confidence in, the senior leadership of a national human rights institution.

The SCA encourages the CNCDH to advocate for the formalization of a transparent and participatory selection process in relevant legislation, regulations or binding administrative guidelines, and for its subsequent application in practice. This should include requirements to:

- Publicize vacancies broadly;
- Maximize the number of potential candidates from a wide range of societal groups;
- Promote broad consultation and / or participation in the application, screening, selection and appointment process;
- Assess applicants on the basis of pre-determined, objective and publicly available criteria; and
- Select members to serve in their own individual capacity rather than on behalf of the organization they represent.

The SCA refers to Paris Principle B.1 and to its General Observation 1.8 on 'Selection and appointment of the decision-making body of National Human Rights Institutions'.

3. Full-time members

The CNCDH has 64 members. This ensures members reflect the diversity of views of human rights stakeholders in France. Due to financial considerations, and in order to ensure diversity, all 64 members are part-time.

Nevertheless, the SCA highlights that the enabling law of the National Human Rights Institution should provide that members of its decision-making body include full-time remunerated members. The Sub-Committee is of the view that the appointment of members on a full-time basis promotes stability, an appropriate degree of management and direction, and limits the risk of members being exposed to conflicts of interest upon taking office. Furthermore, it clearly establishes the terms and conditions of service, including proper remuneration of members, and serves to reinforce their independence and integrity.

The SCA encourages the CNCDH to advocate for the appointment of full-time remunerated members. It refers to its General Observation 2.2 on 'Full-time members of a National Human Rights Institution'.

4. Cooperation with other human rights bodies

The SCA wishes to highlight that regular and constructive engagement with all relevant stakeholders is essential for NHRIs to effectively fulfil their mandates. NHRIs should develop, formalize and maintain working relationships, as appropriate, with other domestic institutions established for the promotion and protection of human rights, including sub-national statutory human rights institutions, thematic institutions, as well as civil society and non-governmental organizations.

In this respect, the SCA acknowledges the CNCDH's cooperation with the Defender on Human Rights, to which it transmits individual petitions. It refers to General Observation 1.5 on 'Cooperation with other human rights bodies'.

3.5 Georgia: Office of the Public Defender (OPD)

Recommendation: The SCA recommends that the OPD be re-accredited **A status**.

The SCA acknowledges the appointment of a new Public Defender in December 2012, and commends the work done by the new Public Defender to address the recommendations made by the SCA at its November 2012 session.

The SCA commends the efforts of the OPD to successfully pursue increased funding, and the OPD's stated intention to allocate increased funding to strengthen existing regional offices and to open a new regional office.

The SCA notes with appreciation the commitment of the OPD to increase the membership of experts on the National Preventive Mechanism from 20 to 36 members, including representatives of NGOs.

The SCA notes:

1. Selection and appointment

The SCA notes with appreciation that the 2012 process for the selection of the Public Defender included broad public consultations with civil society and the media. It commends the OPD for establishing a working group to advocate for changes to its legislation.

The SCA emphasizes the requirement for a clear, transparent and participatory selection process that promotes merit based selection, ensures pluralism and promotes the independence of, and public confidence in, the senior leadership of a national human rights institution.

The SCA encourages the OPD to advocate for the formalization of a transparent and participatory selection process in relevant legislation, regulations or binding administrative guidelines, and for its subsequent application in practice. This should include requirements to:

- Publicize vacancies broadly;
- Maximize the number of potential candidates from a wide range of societal groups;
- Promote broad consultation and / or participation in the application, screening, selection and appointment process;
- Assess applicants on the basis of pre-determined, objective and publicly available criteria; and
- Select members to serve in their own individual capacity rather than on behalf of the organization they represent.

The SCA refers to Paris Principle B.1 and to its General Observation 1.8 on 'Selection and appointment of the decision-making body of National Human Rights Institutions'.

2. Encouraging ratification or accession to international human rights instruments

The OPD reports that it encourages the ratification or accession to international human rights instruments, however the SCA notes that the enabling law of the OPD does not provide it with a specific mandate to do so.

The SCA notes with appreciation that the working group established by the OPD is to advocate for the entrenchment of this function in the OPD's enabling legislation.

The SCA refers to Paris Principle A3 (b) and General Observation 1.3 'Encouraging ratification or accession to international human rights instruments'.

3. Recommendations by NHRIs

As part of their mandate to promote and protect human rights national institutions should monitor and publicise detailed information on responses to and implementation of NHRI recommendations or decisions by public authorities. These authorities are encouraged to respond in a timely manner.

The SCA refers to its General Observation 1.6 'Recommendations made by National Human Rights Institutions'.

3.6 Guatemala: Procurador de los Derechos Humanos (PDH)

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

The SCA welcomes the increasing involvement of the PDH in the international and regional human rights systems, as recommended by the SCA in 2008.

The SCA acknowledges with appreciation the efforts undertaken by the Procurador, appointed in September 2012, to implement structural reforms.

The SCA notes:

1. Tenure

In 2008 the SCA noted that the then Procurador had been appointed for 2002-2007 and re-appointed for 2007-2012, although the enabling law excluded an extension of the term of appointment. The SCA notes that the Constitution and the enabling law still provides for a non-extendible term of five years. The SCA encourages the PDH to advocate for amendments to the enabling law to clarify whether the term of the Procurador may or may not be renewed.

2. Authority to access premises

In 2008 the SCA noted that the PDH should not be required to obtain prior authorization from a judge in order to access premises where human rights violations are alleged to have occurred or to be occurring. The SCA notes that Section 14 of the enabling law still requires prior authorization from a judge. It encourages the PDH to seek an amendment to the law to remove this requirement and to allow unannounced and free access to all such premises.

3. Selection and Appointment

Article 10 of the enabling legislation provides that the Procurador is appointed by the Congress, on the basis of a nomination by its Human Rights Commission and a two-thirds vote of all members of Congress.

The selection and appointment process of the Procurador as set out in the Constitution and enabling law does not reflect a process that is transparent and does not ensure the broad consultation and participation of diverse societal forces.

The SCA emphasizes the requirement for a clear, transparent and participatory selection process that promotes merit based selection, ensures pluralism and promotes the independence of, and public confidence in, the senior leadership of a national human rights institution.

The SCA encourages the PDH to advocate for the formalization of a transparent and participatory selection process in relevant legislation, regulations or binding administrative guidelines, and for its subsequent application in practice. This should include requirements to:

- Publicize vacancies broadly;
- Maximize the number of potential candidates from a wide range of societal groups;
- Promote broad consultation and / or participation in the application, screening, selection and appointment process;
- Assess applicants on the basis of pre-determined, objective and publicly available criteria; and
- Select members to serve in their own individual capacity rather than on behalf of the organization they represent.

The SCA refers to Paris Principle B.1 and to its General Observation 1.8 on ‘Selection and appointment of the decision-making body of National Human Rights Institutions’.

4. Pluralism of staff

In single member institutions such as Ombuds and Procuradores, the SCA highlights the importance of ensuring that the staff are representative of the diverse society in which the institution operates. A diverse staff facilitates the NHRI’s appreciation of, and capacity to engage on all human rights issues affecting the society in which it operates, and promotes the accessibility of the NHRI for all citizens.

The PDH is encouraged to develop policies and procedures to ensure that its staff is broadly representative of the society in which it operates.

The SCA refers to General Observation 1.7 on “Ensuring Pluralism of the National Human Rights Institution”, particularly subsection (d).

5. Mandate

The PDH exercises a broad mandate under both the Constitution and the enabling law. Despite the challenging context in which the PDH is functioning, the SCA encourages it to continue its activities in a manner that reflects its independence as required by Paris Principles B.1 and B.3. It encourages the PDH to develop a framework to enable the PDH to identify, prioritise and address the most critical human rights issues in Guatemala.

3.7 Malawi: Malawi Human Rights Commission (MHRC)

Recommendation: The SCA recommends that consideration of the reaccreditation of the MHRC be deferred to its second session of 2013 in order to allow it to consider the new law once adopted

The SCA recognizes the extensive efforts made by the MHRC to address the SCA’s recommendations, including successfully advocating for a significant increase in State funding.

The SCA commends the MHRC’s active engagement with the government in proposing amendments to ensure its enabling law is consistent with the Paris Principles. It notes that the MHRC’s submission to the Ministry of Justice and Constitutional Affairs includes provisions to ensure the functional immunity of Commissioners and an independent and objective dismissal process.

The SCA notes that these draft amendments are currently on the agenda of the parliamentary session of May 2013. The SCA encourages the Commission to continue its advocacy efforts and monitor the parliamentary process.

The SCA welcomes the development of policy guidelines for the selection of Commissioners and their adoption as an official administrative instrument of the MHRC. The SCA notes that the MHRC is advocating for this policy to be incorporated in Regulations made pursuant to the Human Rights Commission Act.

At its previous sessions, the SCA expressed concern that the role of Law Commissioner and Ombudsman as members of the selection committee and ex-officio members of the MHRC with voting rights may compromise the independence, or perceived

independence, of the MHRC. The SCA emphasizes that the Paris Principles require that Government representatives on governing or advisory bodies of NHRIs should only participate in an advisory capacity. As such, the SCA welcomes the MHRC's plans to undertake national consultations to comprehensively review the enabling legislation, including the roles of these two bodies.

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

The SCA refers to Paris Principle B.2 and to its General Observation 1.9 on 'Government representatives on National Human Rights Institutions'.

3.8 Rwanda: National Commission for Human Rights of the Republic of Rwanda (NCHR)

Recommendation: The SCA recommends that the NCHR be re-accredited **A status**.

The SCA commends the NCHR for its effort to implement the SCA recommendations of its March 2012 session. In particular, it welcomes the adoption of amendments to the law that improve the compliance of the enabling legislation with the Paris Principles and encourages the NCHR to implement this expanded mandate consistent with the priorities it has determined.

The SCA also appreciates the advocacy undertaken by the NCHR to support the amendment of the law preventing hate speech and racial vilification (genocide ideology) in compliance with international human rights standards. Given that the proposed amendments are still pending before the Parliament, the SCA encourages the NCHR to pursue its advocacy to ensure that its recommendations are taken into consideration.

The SCA notes:

1. Selection and Appointment

Article 19 of the law of 8 April 2013 and Article 4 of the Presidential Decree provides for a Selection Committee composed of five members originating from four different entities, i.e. NGOs for the promotion and protection of human rights, the Public Service Commission, Civil Society, and experts with expertise and skills in human rights. However, neither the law nor the decree specify the exact number of representatives from each of the four bodies and entities in order to obtain the required five members composing the Selection Committee.

It is critically important to ensure the formalisation of a clear, transparent and participatory selection and appointment process of the National Human Rights Institution's decision-making body in relevant legislation, regulations or binding administrative guidelines, as appropriate. A process that promotes merit-based selection and ensures pluralism is necessary to ensure the independence of, and public confidence in, the senior leadership of a National Institution.

The SCA encourages the NCHR to advocate for amendments to the Presidential Decree, clarifying the composition of the Selection Committee and granting Civil Society a prominent role. There should not be any interference in the NGO consultations and proceedings towards the appointment of their representatives in the Selection Committee and in the NCHR membership. It is essential to ensure that members to serve in their own individual capacity rather than on behalf of the organization they represent.

The NCHR should ensure that in practice the implementation of the relevant provisions of the new law guarantees broad consultations and effective participation of the concerned social entities throughout the selection and appointment process, including through the establishment of the Selection Committee.

The SCA refers to Paris Principle B.1 and General Observation 1.8 on ‘Selection and appointment of the decision-making body of National Human Rights Institutions’. It is encouraged to seek advice and assistance from the OHCHR and the African Network of NHRIs.

3.9 Togo: National Human Rights Commission (CNDH)

Recommendation: The SCA recommends that the CNDH be re-accredited **A status**.

The SCA commends the CNDH for the steps it has taken to protect its independence in the wake of the threats and harassments received following the release of its investigative report into allegations of torture committed by the State’s Intelligence Service. As investigation and reporting into human rights violations are considered to be core functions of the NHRI’s protection function, it is expected that in a situation where the NHRI receives threats against its independence, it will continue to conduct itself with a heightened level of vigilance and in strict accordance with its mandate.

The SCA remains concerned about the failure of the national authorities to protect and defend the independence of the CNDH through the issuance of public statements or by instituting criminal investigations into allegations of threats against and harassment of CNDH members.

The SCA notes:

1. Adequate Funding

The NHRC budget is inadequate to allow the national institution to function effectively and fully carry out its core functions.

To function effectively, a National Human Rights Institution must be provided with an appropriate level of funding in order to guarantee its independence and its ability to freely determine its priorities and activities. It must also have the power to allocate funding according to its priorities. In particular, adequate funding should, to a reasonable degree, ensure the gradual and progressive realisation of the improvement of the Institution’s operations and the fulfilment of its mandate.

Provision of adequate funding by the State should, as a minimum, include the following:

- a) the allocation of funds for premises which are accessible to the wider community, including for persons with disabilities. In certain circumstances, in order to promote independence and accessibility, this may require that offices are not co-located with other government agencies. Where possible, accessibility should be further enhanced by establishing a permanent regional presence;
- b) salaries and benefits awarded to its staff comparable to those of civil servants performing similar tasks in other independent Institutions of the State;
- c) remuneration of members of its decision-making body (where appropriate);
- d) the establishment of well-functioning communications systems including telephone and internet;

- e) the allocation of a sufficient amount of resources for mandated activities. Where the National Institution has been designated with additional responsibilities by the State, additional financial resources should be provided to enable it to assume the responsibilities of discharging these functions.

Furthermore, the SCA notes that the CNDH does not prepare its budget. Rather, this is prepared by the Ministry of Finance and disbursed on a monthly basis. The SCA is of the view that this arrangement may restrict the Commission's capacity to plan and carry out long-term projects, particularly where financial commitments may vary from month to month.

Financial systems should be such that the National Institution drafts and consults on its annual budget. Once determined, funds should be allocated to a separate budget line over which the NHRI has absolute control. Funds should be released in a manner that permits the NHRI to fulfil its functions effectively, and to ensure it maintains appropriate staffing levels. The NHRI should have the power to determine its priorities and activities, and allocate funds accordingly. The NHRI should manage and account for funds in accordance with the financial accountability rules applicable to government agencies.

The SCA encourages the CNDH to cooperate with competent State bodies to devise a funding model that is appropriate to its national context and promotes its institutional independence. Further, the CNDH is advised to advocate for its active participation in the preparation of its budget as well as to ensure progressive improvement of its funding.

The SCA notes that the CNDH has been designated as the National Preventive Mechanism under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (NPM). In assessing whether an NHRI is carrying out the functions of a NPM in accordance with the Paris Principles, the SCA will consider a range of factors that impact on the capacity of a NHRI to function independently and effectively. This includes whether, among others, the NHRI has sought additional and adequate resources to fulfil this mandate. As such, the SCA encourages the CNDH to advocated for the necessary budget to fulfil its NPM role.

The SCA refers to Paris Principles A.3 and B.2, as well as to its General Observations 1.10 on 'Adequate funding of National Human Rights Institutions', and 1.7 on 'Assessing National Human Rights Institutions as National Preventive and National Monitoring Mechanisms'.

2. Secondment

The CNDH has advised that 25% of its employees have been seconded. This includes secondees in senior positions, such as the Chief of Staff, the Advisor on Communications, the Chief of the Division on Human Rights Protection and Complaints, the Chief of the Division on Human Rights promotion and the Head of the Regional Office of Atakpamé.

A fundamental requirement of the Paris Principles is that a National Human Rights Institution is, and is perceived to be, independent of government interference. The secondment of staff, particularly senior staff, brings into question the capacity of the National Institution to function independently. The Sub-Committee is of the view that:

- a) Senior level posts should not be filled with secondees;
- b) The number of secondees should not exceed 25% except in exceptional or relevant circumstances.

The SCA recommends that the CNDH select its own staff through an open, transparent and merit based selection process. The SCA is of the view that this could be achieved through the adoption of regulations that clearly establish the procedure and policy for recruitment.

The SCA refers to Paris Principle B.2 and to General Observation 2.5 on 'Staffing of the National Human Rights Institution by secondment'.

3. Membership

The SCA notes that two Commissioner positions have been vacant since 23 November 2012. The SCA is of the view that the fulfilment of these positions will assist the institution to effectively discharge its mandate. The SCA encourages the NHRC to advocate with government to fill the positions in accordance with the legislation.

4. Full-Time Members

The SCA notes that only the Chairperson out of the 17 members is full-time. The SCA is of the view that the enabling law should provide that members of its decision-making body include full-time remunerated members. This arrangement promotes stability, an appropriate degree of management and direction, and limits the risk of members being exposed to conflicts of interest upon taking office. Furthermore, it clearly establishes the terms and conditions of service, including proper remuneration of members, and serves to reinforce their independence and integrity.

The SCA refers to General Observation 2.2 on 'Full-time members of a National Human Rights Institution'.

The SCA encourages the CNDH to seek advice and assistance from the Network of African National Human Rights Institutions and OHCHR.

3.10 Uganda : Uganda Human Rights Commission (UHRC)

Recommendation: The SCA recommends that the UHRC be reaccredited with **A status**.

The SCA notes that:

1. Selection and appointment

The enabling law does not provide a clear, transparent and participatory selection process that promotes merit based selection, ensures pluralism and promotes the independence of, and public confidence in, the senior leadership of a national human rights institution.

The SCA encourages the UHRC to advocate for the formalization of the selection process in relevant legislation, regulations or binding administrative guidelines, and for its subsequent application in practice. This should include requirements to:

- Assess applicants on the basis of pre-determined, objective and publicly available criteria;
- Publicize vacancies;

- Maximize the number of potential candidates from a wide range of societal groups; and
- Promote broad consultation and / or participation in the application, screening and selection process.

The SCA refers to Paris Principle B.1 and General Observation 1.8 on ‘Selection and appointment of the decision-making body of National Human Rights Institutions’.

2. Dismissal

Article 56 of the Ugandan Constitution sets out the process for the removal of a judge of the High Court. The same provision, with “necessary modifications”, applies to the removal of a member of the UHRC. The ‘necessary modifications’ are not defined and have not been included in the Commission’s legislation.

The SCA is of the view that an independent and objective dismissal process is required. The grounds for dismissal must be clearly defined in the legislation. Where appropriate, the legislation should specify that the application of the ground must be supported by a decision of an independent body with appropriate jurisdiction. Dismissal should not be allowed based solely on the discretion of the appointing authorities. This is essential to ensure the security of tenure of the members of the governing body and the independence of, and public confidence in, the senior leadership of a national human rights institution.

The SCA refers the UHRC to its General Observation 2.9 on “Guarantee of tenure for Members of governing body”.

3. Funding

The legislation provides that the UHRC may obtain external funds “with approval of the State”.

While it is recognized that the State has an interest in being made aware of external funds accessed by the UHRC, a national institutions should not be required to obtain approval from the state for external funding, as this impacts on its independence. Additionally, external funds should not be tied to donor-defined priorities but rather to the pre-determined priorities of the National Institution.

The SCA refers to General Observation 1.10.

4. Quasi-Judicial Functions

The SCA notes that rules relating to the UHRCs complaint handling functions have been included in subsidiary legislation. The SCA recommends that the UHRC advocate with government to ensure that all relevant provisions relating to effective complaint handling and the implementation of the decisions be included in its enabling legislation. In particular, the UHRC should consider including provisions that would establish:

- the existence and mandate of the human rights tribunal;
- its powers, functions and procedures; and
- applicable remedies,

The SCA refers the UHRC to the Paris Principles A.1 and D: Additional principles concerning the status of commissions with quasi-judicial competence.

5. Special and Thematic Reports

Special and thematic reports serve to highlight key developments in the human rights situation in a country and provide a means by which a National Institution can make recommendations to, and monitor respect for human rights by government. The national institution is encouraged to table all reports in Parliament, including reports on politically sensitive human rights issues, to circulate them widely and to promote their discussion and consideration by the State. State authorities are encouraged to respond to the recommendations of the National Institution in a timely manner. The national institution is encouraged to monitor and report on the implementation of recommendations by the State.

The SCA refers to Paris Principle A.3 and to its General Observation 1.11 on “Annual and thematic reports”.

6. Responding to serious human rights violations

To fulfill effectively its protection mandate a national human rights institution must be prepared to take urgent action on all allegations of gross human rights violations even if they are politically sensitive.

National institutions should investigate, report on and make recommendations to remedy all gross human rights violations, and should continue to systematically monitor and report on responses to and implementation of its recommendations and findings. National institutions should also publicize their investigations, reports and recommendations, and the subsequent responses and actions of government.

The SCA encourages the UHRC to respond urgently to all gross human rights violations including those that may be politically sensitive. The SCA refers the UHRC to Paris Principle 3 A.4(iv), and to G.O. 1.6 on Recommendations by National Human Rights Institutions.

7. Management of the Commission

The SCA notes that the current Chairperson is also a Commissioner of the African Commission on Human and People’s Rights and a Commissioner for the Organisation of Islamic Countries (OIC). It notes further that the legislation does not provide for a standing Vice Chairperson and that commissioners are currently appointed to deputise for the chairperson in an ad hoc manner. The lack of more formal arrangements, and the Chairperson’s active international engagements could impact adversely on the effective management of the UHRC, including executive decision making on urgent issues.

The SCA notes that strong and effective leadership promotes the ongoing and effective fulfilment of the NHRI’s functions, and the regular and appropriate direction of its staff. The SCA encourages the UHRC to implement measures to ensure the effective management of the UHRC when the Chairperson is otherwise absent on other business.

The SCA refers the UHRC to its General Observation 2.2 on Full-time members of a National Human Rights Institution.

3.11 Venezuela: Defensoría del Pueblo (DPV)

Recommendation: The SCA recommends that the DPV be re-accredited **A status**.

The SCA notes the DVP's increased engagement with the international human rights system, as urged by the SCA in 2008. The SCA encourages the DPV to continue its cooperation with the UN treaty bodies, OHCHR, the ICC, and the Network of NHRIs of the Americas.

The SCA refers to its General Observation 1.4 on "Interaction with the International Human Rights System".

However, the SCA notes:

1. Mandate in practice

During its interview with the DPV, the SCA sought additional information on whether the DPV had made statements or recommendations on recent human rights concerns in three particular instances, namely.

- the continued detention of Judge Maria Lourdes Afiuni;.
 - the withdrawal of Venezuela from the American Convention on Human Rights; and
- the Uribana prison incident.

The SCA was of the view that the DPV's response at interview did not show that it had taken a strong public position on these issues. It did not, for example, call for the end to the continued detention of Judge Maria Lourdes Afiuni. In addition it did not speak publicly about the importance of respect for judicial independence notwithstanding the recent report of the Working Group on Arbitrary Detention which considers such detention as a "reprisal" (A/HRC/22/44 (24 December 2012) paragraph 22). Further, the SCA is unaware of any strong recommendations made by the DPV arising from the Uribana prison incident. The SCA considers the DPV's silence on the country's withdrawal from the American Convention on Human Rights incompatible with the obligation of an NHRI to advocate for the ratification of Human Rights treaties.

The SCA strongly urges the DPV to be more pro-active in the exercise and fulfilment of its mandate, and that it take a clear public stand on critical domestic human rights issues. The SCA highlights the importance of NHRI's responding within a reasonable time to alleged gross human rights violations, noting that the delay in doing so impacts adversely on the perceived independence and credibility of, and public confidence in, a NHRI.

The SCA received a submission from NGOs that was then sent to the DPV for comment. However, as the original submission was not received within the time proscribed by the SCA, it was not possible to translate and consider the submission or the DPV's response.

The SCA refers the DPV to Paris Principle A.3.a on the submission to State bodies of opinions or recommendations on any matter concerning human rights promotion and protection.

2. Pluralism of staff

In single member institutions such as Ombuds and Defensoria, the SCA highlights the importance of ensuring that the staff are representative of the diverse segments of society. A diverse staff facilitates the NHRI's appreciation of, and capacity to engage on

all human rights issues affecting the society in which it operates, and promotes the accessibility of the NHRI for all citizens.

The DPV is encouraged to develop policies and procedures to ensure that staff representation is broad and pluralistic.

The SCA refers to General Observation 1.7 on “Ensuring Pluralism of the National Human Rights Institution”, particularly subsection (d).

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

4.1 Nepal: National Human Rights Commission (NHRC)

Recommendation: The SCA recommends that the special review of the NHRC be **deferred** to its second session of 2013.

The SCA thanks the NHRC for the responses which addressed the issues raised by the SCA at its last session. In the interim period, the SCA sought the NHRC’s response to further correspondence which raised additional concerns. In the context of considering these issues, the SCA also noted that the NHRC had not informed the ICC Chairperson or the SCA of the changes to the enabling legislation, as required in Article 16.1 of the ICC Statute.

In this regard the SCA notes:

1. Complaints within the Jurisdiction of the Army Act.

The SCA notes that Article 134 of the interim Constitution excludes the NHRC from considering matters that fall within the jurisdiction of the Army Act. However, the provision subsequently provides that this shall not be a bar to proceedings in respect of any cases of violations of human rights and humanitarian laws.

The SCA seeks the NHRC’s views on the application of this provision and whether it unduly limits its mandate and operations.

2. Selection and appointment

Article 149 of the Constitution provides that the members of all independent constitutional bodies are to be selected by the Constitutional Council consisting of the Prime Minister, Chief Justice, Speaker of the legislature and three ministers designated by the Prime Minister. Article 131 provides the selection of members of the NHRC by the Constitutional Council and their subsequent appointment by the Prime Minister. While the SCA notes that potential members undergo a public hearing in Parliament, it is concerned these provisions do not provide a clear, transparent and participatory selection process that promotes merit based selection, ensures pluralism and promotes the independence of, and public confidence in, the senior leadership of a national human rights institution.

It encourages the NHRC to advocate for the formalization of a clear, transparent and participatory selection and appointment process of the National Human Rights Institution’s decision-making body in relevant legislation, regulations or binding administrative guidelines, as appropriate. Such a process should include requirements to:

- a) Publicize vacancies broadly;
- b) Maximize the number of potential candidates from a wide range of societal groups;
- c) Promote broad consultation and/or participation in the application, screening, selection and appointment process
- d) Assess applicants on the basis of pre-determined, objective and publicly available criteria;
- e) Select members to serve in their own individual capacity rather than on behalf of the organization they represent.

The SCA notes that the current members of the NHRC will complete their terms in 2013. Due to the current political situations, it may be difficult to ensure the timely selection and appointment of new members in accordance with the constitutional and legislative provisions.

The SCA encourages the NHRC to engage with relevant stakeholders to ensure a smooth transition in compliance with the Paris Principles and the ongoing and effective leadership of the NHRC

The SCA refers to Paris Principle B.1 and to its General Observations 1.7 on 'Ensuring Pluralism' and 1.8 on 'Selection and appointment of the governing body'.

3. Financial Autonomy

The SCA received correspondence, which was subsequently shared with the NHRC, suggesting the NHRC was required to seek the approval of the government for expenses and the issuing of cheques. Such a requirement has implications for the financial independence of the institution. The SCA invites the NHRC to provide information establishing its financial independence.

4. Staffing

The SCA received correspondence, which was subsequently shared with the NHRC, questioning the NHRC's effectiveness due to an inability to hire and retain a sufficient number of staff. It was suggested that this arose in part due to delays in passing a law to allow for the appointment of staff outside the normal public service employment processes conducted by the Public Service Commission.

The SCA invites the NHRC to comment on this concern and to provide information on whether it has sufficient staff to fulfil its mandate.

Annex I

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

STATUTE

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

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

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

Art 10	<p>Any NHRI seeking accreditation under the Paris Principles shall apply to the Chairperson of the ICC. Through the ICC Secretariat, that NHRI shall supply the following in support of its application:</p> <ul style="list-style-type: none"> ▪ a copy of the legislation or other instrument by which it is established and empowered in its official or published format; ▪ an outline of its organizational structure including staff complement and annual budget; ▪ a copy of its most recent annual report or equivalent document in its official or published format; ▪ a detailed statement showing how it complies with the Paris Principles as well as any respects in which it does not so comply and any proposals to ensure compliance. The ICC Bureau may determine the form in which this statement is to be provided. <p>The application shall be decided pursuant to Articles 11 and 12 of this Statute.</p>
Art 11.1	<p>All applications for accreditation under the Paris Principles, shall be decided under the auspices of, and in cooperation with, OHCHR by the ICC Bureau after considering a report from the Sub-Committee on Accreditation on the basis of written evidence submitted.</p>
Art 11.2	<p>In coming to a decision, the ICC Bureau and the Sub-Committee shall adopt processes that facilitate dialogue and exchange of information between it and the applicant NHRI as deemed necessary to come to a fair and just decision.</p>
Art 12	<p>Where the Sub-Committee on Accreditation comes to an accreditation recommendation, it shall forward that recommendation to the ICC Bureau whose decision is final subject to the following process:</p> <ul style="list-style-type: none"> ▪ The recommendation of the Sub-Committee shall first be forwarded to the applicant; ▪ An applicant can challenge a recommendation by submitting a written challenge to the ICC Chairperson, through the ICC Secretariat, within twenty eight (28) days of receipt. ▪ Thereafter the recommendation will be forwarded to the members of the ICC Bureau for decision. If a challenge has been received from the applicant, the challenge together with all relevant material received in connection with both the application and the challenge will also be forwarded to the members of the ICC Bureau; ▪ Any member of the ICC Bureau who disagrees with the recommendation shall, within twenty (20) days of its receipt, notify the Chair of the Sub-Committee and the ICC Secretariat. The ICC Secretariat will promptly notify all ICC Bureau members of the objection raised and will provide all necessary information to clarify that objection. If within twenty (20) days of receipt of this information at least four members of the ICC Bureau coming from not less than two regional groups notify the ICC Secretariat that they hold a similar objection, the recommendation shall be referred to the next ICC Bureau meeting for decision; ▪ If at least four members coming from two or more regional groups do not raise objection to the recommendation within twenty (20) days of its receipt, the recommendation shall be deemed to be approved by the ICC Bureau; ▪ The decision of the ICC Bureau on accreditation is final.
Art 13	<p>Should the ICC Bureau decide to decline an application for accreditation of any NHRI</p>

	by reason of its failure to comply with the Paris Principles, the ICC Bureau or its delegate may consult further with that institution concerning measures to address its compliance issues.
Art 14	Any NHRI whose application for accreditation has been declined may reapply for accreditation, according to the guidelines under Article 10, at any time. Such an application may be considered at the next meeting of the Sub Committee on Accreditation.
Art 15	Periodic Re-accreditation All NHRIs that hold an 'A' status are subject to re-accreditation on a five year cyclical basis. Article 10 applies to NHRIs undergoing re-accreditation. In particular reference to an application for accreditation means both the initial application and the application for re-accreditation.
Art 16.1	Review of Accreditation Process Where the circumstances of any NHRI change in any way which may affect its compliance with the Paris Principles, that NHRI shall notify the Chairperson of those changes and the Chairperson shall place the matter before the Sub-Committee on Accreditation for review of that NHRI's accreditation status.
Art 16.2	Where, in the opinion of the Chairperson of the ICC or of any member of the Sub-Committee on Accreditation, it appears that the circumstances of any NHRI that has been accredited with an 'A' status under the former Rules of Procedure may have changed in a way which affects its compliance with the Paris Principles, the Chairperson or the Sub-Committee may initiate a review of that NHRI's accreditation status.
Art 16.3	Any review of the accreditation classification of a NHRI must be finalized within eighteen (18) months.
Art 17	On any review the Chairperson and Sub-Committee on Accreditation shall have all the powers and responsibilities as in an application under Article 10.
Art 18.1	Alteration of Accreditation Classification Any decision that would serve to remove accredited 'A' status from an applicant can only be taken after the applicant is informed of this intention and is given the opportunity to provide in writing, within one (1) year of receipt of such notice, the written evidence deemed necessary to establish its continued conformity to the Paris Principles.
Art 18.2	Authority to immediately suspend accreditation in exceptional circumstances Where, in the opinion of the ICC Chairperson, an exceptional circumstance exists necessitating the urgent suspension of an accredited 'A' status institution, the ICC Bureau may decide to immediately suspend the accreditation classification of that institution and initiate a special review, pursuant to Article 16.2

<p>Art 18.3</p>	<p>Process for immediate suspension of accreditation in exceptional circumstances</p> <p>The decision of the ICC Bureau in such an exceptional circumstance is final and is subject to the following process:</p> <p>(i) The ICC Chairperson, through the ICC Secretariat, will immediately notify the ICC Bureau and the institution in question of the alleged existence of an exceptional circumstance pursuant to Article 18.2 and the recommendation to suspend the accreditation classification of that institution;</p> <p>(ii) The institution can challenge the recommendation by submitting a written challenge to the ICC Bureau, through the ICC Secretariat, within thirty (30) days of receipt;</p> <p>(iii) Any member of the ICC Bureau who disagrees with the recommendation to suspend the accreditation classification of the institution shall, within thirty (30) days of receipt of the institution’s challenge, notify the ICC Secretariat. The ICC Secretariat will promptly notify all ICC Bureau members of the objection and will provide all necessary information to clarify that objection. If within twenty (20) days of receipt of this information at least two members of the ICC Bureau coming from not less than two regional groups notify the ICC Secretariat that they hold a similar objection, the recommendation shall be referred to the next ICC Bureau meeting for decision;</p> <p>(iv) If no member of the ICC Bureau raises an objection to the recommendation, within thirty (30) days of receipt of the institution’s challenge, the decision to suspend the institution’s status shall be deemed to be approved by the ICC Bureau.”</p>
<p>Art 18.4</p>	<p>For the purposes of article 18.2 and 18.3, an “exceptional circumstance” refers to a sudden and drastic change in the internal political order of a state such as:</p> <ul style="list-style-type: none"> - a break in the constitutional or democratic order; or - a declared state of emergency; or - gross violations of human rights; <p>and this is accompanied by any of the following:</p> <ul style="list-style-type: none"> - there is a change in the NHRI enabling legislation or other applicable law that is contrary to the Paris Principles; or - there is change in the composition of the NHRI that is not undertaken in accordance with the established selection and /or appointment process; or - the NHRI acts in a way that seriously compromises its compliance with the Paris Principles.

Art 19	An accreditation classification held by a NHRI may be suspended if the NHRI fails to submit its application for re-accreditation or fails to do so within the prescribed time without justification.
Art 20	An accreditation classification may lapse if a NHRI fails to submit an application for re-accreditation within one (1) year of being suspended for failure to reapply, or if a NHRI under review under Article 16 of this Statute fails to provide sufficient documentation, within eighteen (18) months of being placed under review, to satisfy the body determining membership under this Statute that it remains in conformity with the Paris Principles.
Art 21	NHRIs whose accreditation has been suspended remain suspended until the body determining their compliance with the Paris Principles under this Statute comes to a determination of their accreditation status or until their accreditation lapses.
Art 22	NHRIs whose accreditation status has lapsed or been revoked may regain accreditation only by re-applying for accreditation as provided for in Article 10 of this Statute.
Art 23	In the event that accreditation lapses or is revoked or suspended, all rights and privileges conferred on that NHRI through accreditation immediately cease. In the event that a NHRI is under review, it shall retain the accreditation status it has been granted until such time as the body determining membership comes to a decision as to its compliance with the Paris Principles or its membership lapses.
	SECTION 6: MEMBERS
Art 24.1	Eligibility Only NHRIs which comply fully with the Paris Principles, being those which have been accredited with an 'A' status in accordance with the former Rules of Procedure or pursuant to the procedure established under this Statute shall be eligible to be voting members of the ICC.
Art 24.2	NHRIs that are only partially compliant with the Paris Principles, being those which have been accredited with a 'B' status in accordance with the former Rules of Procedure or pursuant to the procedure established under this Statute shall be eligible to become a non-voting member.
Art 25	Any NHRIs wishing to become a member of the ICC shall apply in writing to the Chairperson of the ICC giving: in the case of an application for voting membership, particulars of the date on which it was accredited with A status; and, in the case of an application for non-voting membership, particulars of the date on which it was accredited with B status. In either case, the applicant must indicate their agreement to be bound by this Statute as amended from time to time (including as to the payment of the applicable annual membership subscription). The application shall be considered and decided by the ICC Bureau.
Art 26	A NHRI shall cease to be a member of the ICC upon written notice by that NHRI of resignation given to the Chairperson of the ICC, but without prejudice to the

	obligation of the NHRI to discharge outstanding fiscal obligations due to the ICC at the date of resignation.
Art 27	Membership may be revoked by resolution of the ICC Bureau if the body determining accreditation status under this Statute determines that a member no longer meets the membership eligibility requirements in Article 24.
Art 28	Membership may be cancelled by resolution of the ICC Bureau if that member has failed for six (6) months or more to pay an annual subscription that is due and owing.
Art 29.1	A NHRI whose membership has been revoked, or cancelled for non-payment of an annual subscription, may regain membership by reapplying for membership under Article 25 of this Statute.
Art 29.2	Where membership has been cancelled for non-payment of a subscription, re-admission to membership shall be subject to payment of the outstanding subscription or so much thereof as the ICC Bureau shall determine.
Art 30	Independence of Members Notwithstanding anything in this Statute, the independence, authority and national status of members, and their powers, duties and functions under their own legislative mandates, and their participation in the different international fora on human rights shall in no way be affected by the creation of the ICC or its functioning.
Art 31.1	SECTION 7: REGIONAL GROUPING OF MEMBERS For the purpose of ensuring a fair balance of regional representation on the ICC the following regional groups are established: <ul style="list-style-type: none"> ▪ Africa ▪ The Americas ▪ Asia-Pacific ▪ Europe
Art 31.2	The members within any regional group may establish such sub-regional groupings as they wish.
Art 31.3	The members of regional groups may establish their own procedures concerning meetings and activities.
Art 31.4	Each regional group is to appoint four (4) members accredited with an 'A' status which shall each have a representative on the ICC Bureau.
Art 32	SECTION 8: GENERAL MEETINGS OF MEMBERS The General Meeting is composed by the ICC members and constitutes the supreme power of the association.
Art 33	The duties of the General Meeting include control of the activities of the ICC, review and control of the activities of the ICC Bureau, ratification of the program of ICC activities, the amendment of this Statute, consideration of funding issues and the fixing of annual membership subscriptions to be paid by members accredited with an 'A' status provided however that decisions of the ICC Bureau on accreditation determinations shall not be subject to review or control by a General Meeting.
Art 34	The General Meeting ratifies the appointment of the members of the ICC Bureau and elects the Chairperson and the Secretary. The members of the ICC Bureau must be

	individuals representing the members of the ICC accredited with an “A” status which have been appointed by their regional groups under article 31.
Art 35	If required under Swiss Law, the General Meeting must elect an auditor who shall not be a member of the ICC.
Art 36	The General Meeting meets at least once a year in conjunction with a meeting of the Human Rights Council upon written notice given by the ICC Bureau to the members at least six (6) weeks in advance and at such other times required according to the law including when a request is demanded by one fifth or more of the members.
Art 37	The agenda of the meeting shall be submitted to the members with the written notice of meeting.
Art 38	SECTION 9: RIGHT TO VOTE AND DECISIONS At General Meetings only members accredited with an ‘A’ status shall be entitled to vote. A member that has been accredited with a ‘B’ status has the right to participate and speak in General Meetings (and all other open meetings and workshops of the ICC). A NHRI that is not accredited with either an ‘A’ or ‘B’ status may, with the consent of the particular meeting or workshop, attend as an observer. The Chairperson, after consultation with ICC members, may invite NHRIs who are not members of the ICC and any other person or institution to participate in the work of the ICC as an observer.
Art 39	At General Meetings only one (1) NHRI per Member State of the United Nations shall be eligible to be a voting member. Where more than one (1) institution in a State qualifies for membership the State shall have one (1) speaking right, one (1) voting right, and if elected, one (1) ICC Bureau member. The choice of an institution to represent the NHRIs of a particular State shall be for the relevant institutions to determine.
Art 40	Decisions of the General Meeting are passed by the majority of members present or duly represented. The General Meeting will only deal with matters that are summarized in the Agenda. If necessary, or on the request of more than half of the members present at a General Meeting, the Chairperson can call an Extraordinary General Meeting.
Art 41	A quorum of at least one half of the total number of members is necessary.
Art 42	Arabic, English, French, and Spanish shall be the working languages of the ICC. As a result, documents from the ICC should be available in these languages.
Art 43	SECTION 10: ICC BUREAU The ICC is managed by a committee entitled the ICC Bureau which shall comprise sixteen (16) individuals, including the Chairperson and the Secretary.
Art 44	In the event that a representative of a member of a regional group for any reason is no longer able to represent that member, or if the member ceases to hold an 'A' status accreditation, or the member's appointment under Article 31.4 is withdrawn, the representative shall cease to be a member of the ICC Bureau and the Regional Coordinating Committee shall thereupon appoint another representative who shall act as a casual member of the ICC Bureau until the next General Meeting.
Art 45	The Chairperson and the Secretary shall be elected on a geographically rotational basis by the General Meeting for a non-renewable term of three (3) years. The order of rotation shall be: the Americas, the Asia Pacific region, Africa, and Europe.
Art 46	Powers of the ICC Bureau The ICC Bureau is empowered to act generally in the name of the ICC and to carry out the purpose and functions of the ICC. Without limiting the generality of the powers of management the ICC Bureau is empowered to:

	<ul style="list-style-type: none"> ▪ decide applications for accreditation after considering a recommendation from the Sub-Committee on Accreditation; ▪ decide applications for membership of the ICC; ▪ summon General Meetings of the ICC; ▪ collaborate and work with the OHCHR and its NIU, and in particular to work with the NIU in connection with the ICC accreditation process, annual meetings of the ICC, meetings of the ICC Bureau and international conferences of NHRIs. In addition, the NIU will facilitate and coordinate the participation of NHRIs in the Human Rights Council, its mechanisms, and the United Nations human rights treaty bodies ; ▪ use and accept the services of the NIU as the Secretariat for the ICC, the ICC Bureau and its Sub-Committee on Accreditation; ▪ appoint from the members of the ICC Bureau a person to be the treasurer of the ICC; ▪ acquire, lease, dispose of or otherwise deal in property of any kind; ▪ open bank accounts, appoint signatories thereto and define the authority of the signatories; ▪ spend money and do all things it considers desirable to promote the purposes of the ICC; ▪ delegate any function to a nominated person, standing committee or subcommittee of persons or members; ▪ co-ordinate and arrange conferences, meetings, standing committees and sub-committees, and other activities; ▪ engage, dismiss or suspend employees, agents and contractors; ▪ enter into contracts ; ▪ engage professional assistance for the preparation of annual and other financial statements, to obtain legal advice, and for any other purpose; ▪ prepare and disseminate information notes, bulletins and papers of any kind to members, and to promote generally information about human rights issues and activities of the Human Rights Council, its mechanisms, the United Nations human rights treaty bodies, and of the ICC in which members could have an interest; ▪ receive financial grants and donations, and gifts of any kind; ▪ adopt, amend or revoke rules of procedure in relation to the working methods of the ICC Bureau and its sub-committees to regulate or clarify any matter contemplated by this Statute. Every decision to adopt, amend or revoke a rule shall as soon as is practicable be circulated to all members of the ICC and posted on the nhri.net website.
<p>Art 47</p>	<p>Membership Subscription The ICC Bureau shall as and when it considers appropriate recommend to a General Meeting that an annual membership subscription be set by the General Meeting. Once set the Bureau will ensure procedures are in place to collect membership subscriptions. The ICC Bureau in its discretion may waive in whole or in part the annual subscription for a member if satisfied that the member is unable to pay the full amount due.</p>
<p>Art 48</p>	<p>Meetings of the ICC Bureau A meeting of the ICC Bureau shall be held in conjunction with each General Meeting of the ICC and at least two (2) times each year. Otherwise, the ICC Bureau shall meet at such times and places as it or the Chairperson shall decide. Written notice summoning a meeting shall be given at least four (4) weeks in advance unless the ICC Bureau agrees to a shorter period for that meeting. The agenda of the meeting shall be submitted to the members with the written notice of meeting.</p>

Art 49	<p>The Chairperson and Secretary</p> <p>The Chairperson, or in his or her absence the Secretary, shall direct the work of the General Meeting and the ICC Bureau. Until otherwise decided by a General Meeting, she or he shall represent the ICC in accordance with developed practices and authorities followed by the Chairperson acting under the former Rules of Procedure. In particular, the Chairperson may speak at the Human Rights Council, its mechanisms, United Nations human rights treaty bodies and, when invited, at other international organisations:</p> <ul style="list-style-type: none"> ▪ on behalf of the ICC on topics authorised by a General Meeting or the ICC Bureau; ▪ on behalf of individual NHRIs when authorised by them; ▪ on thematic human rights issues to promote policy decided by a General Meeting, a biennial conference or by the ICC Bureau; and ▪ generally to advance the objects of the ICC.
Art 50.1	<p>Conduct of ICC Bureau Business</p> <p>Arabic, English, French, and Spanish shall be the working languages of the ICC Bureau. As a result, documents from the ICC should be available in these languages.</p>
Art 50.2	A majority of the members of the ICC Bureau shall constitute a quorum.
Art 50.3	An agenda for each meeting shall be drawn up by the Chairperson in consultation with the ICC Bureau members. Agenda items may be added at the meeting if approved by a majority of the members present.
Art 50.4	Members of the ICC Bureau may be accompanied at meetings by advisers, including, by representatives from the relevant Regional Coordinating Committee. Such persons attend in the capacity of advisers to their members and observers to the meeting, and may participate in discussions at the call and invitation of the Chair.
Art 50.5	Each member of the ICC Bureau shall have one (1) vote. Where possible, decisions of the ICC Bureau shall be reached by consensus. When consensus is not possible, decisions shall be by a majority of members present and voting. In the event of an equality of votes, the proposal being voted on shall be regarded as being defeated.
Art 50.6	The ICC Bureau may invite NHRIs whether or not members of the ICC and any other person or institution to participate in the work of the ICC or the ICC Bureau as an observer.
Art 50.7	Notwithstanding the forgoing provisions of this Article 50, the ICC Bureau may decide any matter in writing without the need to formally summon a meeting provided that a majority of the members of the ICC Bureau concur with the decision.
Art 50.8	The ICC Bureau, through the Chairperson or in her or his absence through the Secretary, shall present to General Meetings reports on activities carried out by the ICC, the ICC Bureau and its officers since the preceding General Meeting.
Art 51	<p>Further Procedure</p> <p>Should any question concerning the procedure of the ICC Bureau arise which is not provided for by these rules the ICC Bureau may adopt such procedure as it thinks fit.</p>
Art 52	<p>SECTION 11: FINANCIAL ADMINISTRATION</p> <p>Accounting Year</p> <p>The financial year ends on 31 December of each year.</p>

<p>Art 53</p>	<p>SECTION 12: ASSETS OF THE ICC The assets of the ICC comprise and include:</p> <ul style="list-style-type: none"> ▪ grants obtained from international and national public and semi-public organizations; ▪ donations; ▪ subscriptions; ▪ funds entrusted to it by other organizations, associations, businesses or institutions; and ▪ income and property of any kind received from whatever source.
<p>Art 54</p>	<p>The assets of the ICC must be applied solely towards promoting the purposes of the ICC as set out in Section 3 in line with the Principles as set out in Article 7.</p>
<p>Art 55</p>	<p>SECTION 13: DISSOLUTION AND LIQUIDATION Dissolution The ICC may be dissolved by resolution of the ICC in a General Meeting. A General Meeting called for this purpose shall be convened specially. At least one half of the members must be present. If this proportion is not present the General Meeting must be reconvened after an interval of at least two (2) weeks. It can then validly deliberate with whatever numbers of members are present. In any case the dissolution can only be approved by a majority of three quarters of the members present.</p>
<p>Art 56</p>	<p>Liquidation The winding up of the ICC and the liquidation of its assets shall be carried out by one (1) or more liquidators appointed by the General Meeting. The General Meeting must authorize the liquidator or liquidators to distribute the net assets to another association or public organization having similar purposes to the ICC. No part of the net assets available for distribution shall be paid to any member of the ICC.</p>
<p>Art 57</p>	<p>SECTION 14: RULES OF PROCEDURE The General Meeting may adopt, amend or revoke rules of procedure in relation to the working methods of the ICC, including General Meetings and international conferences, to regulate or clarify any matter contemplated by this Statute.</p>
<p>Art 58</p>	<p>SECTION 15: AMENDMENT OF STATUTE This Statute may be amended only by a General Meeting of the ICC.</p>
<p>Art 59</p>	<p>SECTION 16: TRANSITIONAL PROVISION The Sub-Committee on Accreditation and the Rules of Procedure for the ICC Sub-Committee on Accreditation are by this Statute continued in existence, and shall remain in existence until amended or revoked by the ICC Bureau. The Sub-Committee on Accreditation is hereby constituted a sub-committee of the ICC Bureau. The Rules of Procedure for the ICC Sub-Committee on Accreditation are incorporated into this Statute as Annex I</p>
<p>EXECUTED BY:</p> <p>Ms. Jennifer Lynch, Q.C.</p> <p>30 July 2008</p> <p>Amended at a General Meeting held at Nairobi, 21st October 2008</p> <p>Amended at a General Meeting held at Geneva, 24th March 2009</p>	

ANNEX TO THE ICC STATUTE

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

1. Mandate

In accordance with the Statute of the Association International Coordination Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) (Article 1.1), the Sub-Committee on Accreditation has the mandate to review and analyse accreditation applications forwarded by the ICC Chairperson and to make recommendations to the ICC on the compliance of applicants with the Paris Principles.

2. Composition of the Sub-Committee

2.1. For the purpose of ensuring a fair balance of regional representation on the Sub-Committee on Accreditation, it shall be composed of one (1) ICC NHRI accredited 'A status' for each of the four (4) regional groups as established by the ICC Statute (Section 7), namely Africa, Americas, Asia-Pacific, and Europe.

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

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

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

3. Functions

3.1. Each regional group representative to the Sub-Committee on Accreditation shall facilitate the application process for NHRIs in the region.

3.2. The regional grouping representative shall supply NHRIs from their region with all relevant information pertaining to the accreditation process, including a description of the process, requirements and timelines.

3.3. In accordance with the ICC Statute (Section 5), any NHRI seeking membership or seeking re-accreditation shall apply to the ICC Chairperson, supplying all required supporting documents through the ICC Secretariat.

3.4. These applications and support documents shall be provided to the ICC Secretariat at least four (4) months prior to the meeting of the Sub-Committee. Subject to rule 3.5 of these Rules, an Institution undergoing re-accreditation that does not comply with this

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

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

3.6. Any civil society organization wishing to provide relevant information pertaining to any accreditation matter before the Sub-Committee shall provide such information in writing to the ICC Secretariat at least four (4) months prior to the meeting of the Sub-Committee.

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

3.8. The ICC Chairperson, with support from the ICC Secretariat, will also provide a summary of particular issues for consideration by the Sub-Committee.

4. Procedures

4.1. The Sub-Committee on Accreditation will meet after the General Meeting of the ICC in order to consider any accreditation matter under Section 5 of the Statute.

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

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

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

4.5. The Sub-Committee may, pursuant to Article 11.2 of the ICC Statute, consult with the applicant Institution, as it deems necessary, to come to a recommendation. The Sub-Committee shall, also pursuant to and for the purposes set out in Article 11.2, consult with the applicant Institution when an adverse decision is to be recommended. These consultations may be in the form deemed most appropriate by the Sub-Committee but must be supported by written documentation; in particular the substance of verbal consultations must be recorded and be available for review. Since the ICC Bureau makes the final decision on membership, an Institution undergoing a review retains its membership status during the consultation process.

5. Accreditation Classifications

In accordance with the Paris Principles and the ICC Statute, the different classifications for accreditation used by the Sub-Committee are:

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

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

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

6. Report and Recommendations

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

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

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

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

- (a) Instruct Institutions when they are developing their own processes and mechanisms, to ensure Paris Principles compliance;

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

** Adopted by the members of the International Coordinating Committee at its 15th session, held on 14 September 2004, Seoul, Republic of Korea. Amended by the members of the ICC at its 20th session, held on 15 April 2008, Geneva, Switzerland.*

Annex II

PRINCIPLES RELATING TO THE STATUS OF NATIONAL INSTITUTIONS

(A) Competence and responsibilities*

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

(c) To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;

(d) To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations and, where necessary, to express an opinion on the subject, with due respect for their independence;

(e) To cooperate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the promotion and protection of human rights;

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

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

(B) Composition and guarantees of independence and pluralism

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

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

(b) Trends in philosophical or religious thought;

(c) Universities and qualified experts;

(d) Parliament;

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

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

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

(C) Methods of operation

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

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

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

(c) Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;

(d) Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly convened;

(e) Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions;

(f) Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular ombudsmen, mediators and similar institutions);

(g) In view of the fundamental role played by the non-governmental organizations in expanding the work of the national institutions, develop relations with the non-governmental organizations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.

Additional principles concerning the status of commissions with quasi jurisdictional competence

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

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

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

Annex III

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

General Observations of the Sub-Committee on Accreditation

Introduction

1. The 'Principles relating to the status of national institutions' (Paris Principles), endorsed by the World Conference on Human Rights and the UN General Assembly, are the minimum international standards for the establishment of National Human Rights Institutions (National Institutions). They provide a broad normative framework for the status, structure, mandate, composition, power and methods of operation of the principal domestic human rights mechanism.
2. National Institutions are established by States for the specific purpose of advancing and defending human rights at the national level, and are acknowledged to be one of the most important means by which States bridge the implementation gap between their international human rights obligations and actual enjoyment of human rights on the ground. The establishment and strengthening of National Institutions pursuant to the Paris Principles falls within the set of international human rights commitments made by States. It is therefore the responsibility of the State to ensure that it has in place a Paris Principle-compliant national institution.
3. As a core function, the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) promotes the establishment and strengthening of National Institutions in conformity with the Paris Principles and uses the Principles as criteria to determine ICC membership. The ICC Sub-Committee on Accreditation (SCA) has been delegated the task of assessing institutional compliance with the Paris Principles.
4. Since 2006, the SCA has used the knowledge gained through the ICC accreditation process to develop an important body of jurisprudence to give meaning to the content and scope of the Principles. Sections 6.2 and 6.3 of the SCA Rules of Procedure provide the Sub-Committee with authority to develop 'General Observations' on common and important interpretative issues on the implementation of the Paris Principles.
5. The SCA, with its depth of experience and extensive study of the guiding principles, is well placed to articulate its standards and deliver the necessary guidance to ensure a consistency of approach in its implementation and application. The SCA possesses an understanding of the issues faced by National Institutions, operating in a wide range of circumstances, including a diversity of institutional models and political systems. As a result, it has developed clear examples of compliance with the Paris Principles in practice.

6. The General Observations are referred to in the SCA's recommendations issued to National Institutions upon review of their application for ICC accreditation, re-accreditation or special review. The General Observations, as interpretative tools of the Paris Principles, may be used to:
 - a) Instruct institutions when they are developing their own processes and mechanisms, to ensure Paris Principles compliance;
 - b) Persuade domestic governments to address or remedy issues relating to an institution's compliance with the standards articulated in the General Observations;
 - c) Guide the SCA in its determination of new accreditation applications, re-accreditation applications or other review:
 - i. If an institution falls substantially short of the standards articulated in the General Observations, it will be open for the SCA to find that it was not Paris Principle compliant.
 - ii. If the SCA has noted concern about an institution's compliance with any of the General Observations, it may consider what steps, if any, have been taken by an institution to address those concerns in future applications. If the SCA is not provided with proof of efforts to address the General Observations previously made, or offered a reasonable explanation why no efforts had been made, it would be open to the SCA to interpret such lack of progress as non-compliance with the Paris Principles.
7. The SCA is aware of the different National Institution structural models in existence, including: commissions; ombudsman institutes; hybrid institutions; consultative and advisory bodies; research institutes and centres; civil rights protectors; public defenders; and parliamentary advocates. (For a more complete discussion of the different model-types, the SCA refers to *Professional Training Series No.4: National Human Rights Institutions: History, Principles, Roles and Responsibilities*, United Nations Office of the High Commissioner for Human Rights, New York and Geneva, 2010, pp. 15-19). The SCA is of the view that its General Observations must be applied to every National Institution, regardless of its structural model type.
8. The citation of General Observations is done in tandem with the issuance of specific recommendations on individual accreditation applications, the latter of which are narrow in application and value to the National Institution concerned. Inversely, the General Observations, being independent of a specific set of facts pertaining to a single domestic context, are universal in their application and provide guidance in both individual cases and more generally.
9. The categorization of the General Observations into the following two sections clarifies for all stakeholders which of the General Observations are direct interpretations of the Paris Principles, and which are drawn from the SCA's extensive experience in identifying proven practices to ensure independent and effective National Institutions in line with the Paris Principles:

- i. Essential requirements of the Paris Principles; and
 - ii. Practices that directly promote Paris Principles compliance.
10. As it gains further experience, the SCA will seek to develop new General Observations. In 2011, the ICC adopted a formalized multi-stage process for doing so. This procedure was designed to promote their accessibility by ensuring consistency in their content and format; being clearly written, of reasonable length and readily understandable to a broad range of readers, primarily National Institutions and States.
11. The first stage consists of a discussion amongst SCA members, representatives of the ICC Regional Coordinating Committees (RCCs), and OHCHR on the topic of the General Observation. Secondly, a Working Group is established. It canvasses ICC members, through the RCCs, for their views on the topic to be addressed. Thirdly, the Working Group, taking into account any comments received from the ICC membership, develops a draft and presents it to the SCA for review and comment. Lastly, once approved, the SCA will recommend the revised draft be formally adopted through its sessional reports to the ICC Bureau.
12. The SCA's work in developing a comprehensive and detailed interpretation of the Paris Principles is of widespread value as it serves to enrich the understanding of the requirements to ensure the effective establishment, functioning and strengthening of National Institutions. Ultimately a synthesis of the most important issues of interpretation that have been uncovered by the individual accreditation applications, the General Observations are relevant to National Institutions globally, including those not currently the subject of the immediate accreditation review. The General Observations further enable stakeholders to take a proactive approach to effect the necessary changes to their own processes and mechanisms without requiring the SCA to provide them with specific recommendations resulting from the outcome of an accreditation review.
13. National Institutions are reliant upon their national government to implement many of the provisions of the Principles, including their legislative establishment and provision of adequate funding. Where the SCA notes as an issue of concern, the failure of the State to fulfill its obligations pursuant to the Paris Principles, the National Institution may use the standards articulated in the General Observations to recommend the action required by the State to effect the necessary change to address or remedy issues before the accreditation status of the National Institution is next reviewed.
14. The General Observations have also been developed to preserve the institutional memory of the SCA and to ensure a consistency in approach taken by its rotational membership.
15. The appropriate implementation of General Observations is key to advancing National Institution maturity. By clarifying the requirements of the Paris Principles, the General Observations provide National Institutions with accessible, relevant

and readily contextualized norms to speed their evolution into more efficient and effective institutions, resulting in the enhanced promotion and protection of human rights on the ground.

**Adopted by the Bureau of the International Coordinating Committee of National Human Rights Institutions for the Promotion and Protection of Human Rights (ICC) at its Meeting held in Geneva, Switzerland, 6-7 May 2013.*

GENERAL OBSERVATIONS

1. Essential requirements of the Paris Principles

- 1.1 The establishment of National Human Rights Institutions
- 1.2 Human rights mandate
- 1.3 Encouraging ratification or accession to international human rights instruments
- 1.4 Interaction with the International Human Rights System
- 1.5 Cooperation with other human rights bodies
- 1.6 Recommendations by National Human Rights Institutions
- 1.7 Ensuring pluralism of the National Human Rights Institution
- 1.8 Selection and appointment of the decision-making body of National Human Rights Institutions
- 1.9 Government representatives on National Human Rights Institutions
- 1.10 Adequate funding of National Human Rights Institutions
- 1.11 Annual reports of National Human Rights Institutions

2. Practices that directly promote Paris Principles compliance

- 2.1 Guarantee of tenure for members of the National Human Rights Institution decision-making body
- 2.2 Full-time members of a National Human Rights Institution
- 2.3 Guarantee of functional immunity
- 2.4 Recruitment and retention of National Human Rights Institution staff
- 2.5 Staffing of the National Human Rights Institution by secondment
- 2.6 National Human Rights Institutions during the situation of a coup d'état or a state of emergency
- 2.7 Limitation of power of National Human Rights Institutions due to national security
- 2.8 Administrative regulation of National Human Rights Institutions
- 2.9 Assessing National Human Rights Institutions as National Preventive and National Monitoring Mechanisms
- 2.10 The quasi-judicial competency of National Human Rights Institutions (complaints-handling)

6. Procedural issues

6.1 Application processes

6.2 Deferral of re-accreditation applications

6.3 NHRIs under review

6.4 Suspension of accreditation

6.5 Submission of information

6.6 More than one national institution in a State

6.7 Assessing the Performance of National Human Rights Institutions

1. Essential requirements of the Paris Principles

G.O. 1.1 The establishment of National Human Rights Institutions

A National Human Rights Institution must be established in a constitutional or legislative text with sufficient detail to ensure the National Institution has a clear mandate and independence. In particular, it should specify the Institution's role, functions, powers, funding and lines of accountability, as well as the appointment mechanism for, and terms of office of, its members. The establishment of a National Institution by other means, such as an instrument of the Executive, does not provide sufficient protection to ensure permanency and independence

JUSTIFICATION

Pursuant to section A.2 of the Paris Principles: "*A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.*"

The Sub-Committee recognizes that National Institutions are created in different socio-economic circumstances and political systems, which may in turn impact on the manner in which they are formally established. Nonetheless, the Paris Principles are clear on the requirement that National Institutions, regardless of the constitutional and legal system in which they operate, be formally entrenched in law and in this way be distinguished from an agency of state, a non-government organization, or an ad hoc body. Further, it is necessary that the constitutional or legislative text set out the National Institution's mandate as well as the composition of its leadership body. This necessarily requires the inclusion of complete provisions on the Institution's appointment mechanisms, terms and conditions of office, mandate, powers, funding and lines of accountability.

The Sub-Committee considers this provision to be of central importance in guaranteeing both the permanency and independence of the Institution.

The creation of a National Institution in other ways, such as by a decision of the Executive (through a decree, regulation, motion, or administrative action) and not by the legislature raises concerns regarding permanency, independence from government and the ability to exercise its mandate in an unfettered manner. This is because instruments of the Executive may be modified or cancelled at the whim of the Executive, and such decisions do not require legislative scrutiny. Changes to the mandate and functions of an independent agency of state charged with the promotion and protection of human rights should be scrutinised by the legislature and not be at the fiat of the Executive. Any amendment or repeal of the constitutional or legislative text establishing the National Institution must require the consent of the legislature to ensure the Institution's guarantees of independence and powers do not risk being undermined in the future.

Excerpt from the Paris Principles

A) Competence and responsibilities –

2. *A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.*

1. Essential requirements of the Paris Principles

G.O. 1.2 Human rights mandate

All National Human Rights Institutions should be legislatively mandated with specific functions to both promote and protect human rights.

The Sub-Committee understands 'promotion' to include those functions which seek to create a society where human rights are more broadly understood and respected. Such functions may include education, training, advising, public outreach and advocacy. 'Protection' functions may be understood as those that address and seek to prevent actual human rights violations. Such functions include monitoring, inquiring, investigating and reporting on human rights violations, and may include individual complaint handling.

A National Institution's mandate should be interpreted in a broad, liberal and purposive manner to promote a progressive definition of human rights which includes all rights set out in international, regional and domestic instruments, including economic, social and cultural rights. Specifically, the mandate should:

- extend to the acts and omissions of both the public and private sectors;
- vest the National Institution with the competence to freely address public opinion, raise public awareness on human rights issues and carry out education and training programs;
- provide the authority to address recommendations to *public authorities*, to analyse the human rights situation in the country, and to obtain statements or documents in order to assess situations raising human rights issues;
- authorize unannounced and free access to inspect and examine any public premises, documents, equipment and assets without prior written notice;
- authorize the full investigation into all alleged human rights violations, including the military, police and security officers.

JUSTIFICATION

According to sections A.1 and A.2 of the Paris Principles, a National Institution should possess, "*as broad a mandate as possible*", which is to be, "*set forth in a constitutional or legislative text*", and should include both, "*the promot[ion] and protect[ion] of human rights*". Section A.3 of the Paris Principles enumerates specific responsibilities the National Institution must, at a minimum, be vested with. These requirements identify two main issues which must necessarily be addressed in the establishment and operation of a National Institution:

- (i) The mandate of the Institution must be established in national law. This is necessary to guarantee the independence and autonomy with which a National Institution undertakes its activities in the fulfilment of its public mandate;
- (ii) The National Institution's mandate to both promote and protect human rights must be defined as broadly as possible so as to give the public the protection of a wide range of international human rights standards: civil; political;

economic; cultural; and social. This gives effect to the principle that all rights are universal, indivisible, and interdependent.

Excerpt from the Paris Principles

A. Competence and responsibilities –

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

instruments to which the State is a party, and their effective implementation;

- (c) To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;*
- (d) To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations and, where necessary, to express an opinion on the subject, with due respect for their independence;*
- (e) To cooperate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the promotion and protection of human rights;*
- (f) To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;*
- (g) To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.*

1. Essential requirements of the Paris Principles

G.O. 1.3 Encouraging ratification or accession to international human rights instruments

Encouraging ratification of, or accession to international human rights instruments, and the effective implementation of international human rights instruments to which the state is a party, is a key function of a National Human Rights Institution. The Principles further prescribe that National Institutions should promote and encourage the harmonization of national legislation, regulations and practices with these instruments. The Sub-Committee considers it important that these duties form an integral part of the enabling legislation of a National Institution. In fulfilling this function, the National Institution is encouraged to undertake activities which may include the following:

- monitoring developments in international human rights law;
- promoting state participation in advocacy for and the drafting of international human rights instruments;
- conducting assessments of domestic compliance with and reporting on international human rights obligations, for example, through annual and special reports and participation in the Universal Periodic Review process.

National Institutions should, in encouraging their governments to ratify international human rights instruments, advocate that this be done without reservations.

JUSTIFICATION

Sections A.3(b) and (c) of the Paris Principles require that National Institutions have the responsibility to “*promote and ensure the harmonization of national legislation, regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation*”. Additionally, the National Institution has the responsibility “*to encourage ratification of [these] instruments or accession to those instruments, and to ensure their implementation*”.

In practice this requires National Institutions to review relevant national laws, regulations and policies to determine that they are compatible with the obligations arising from international human rights standards and propose the amendment or repeal of any legislation, regulations or policies that are inconsistent with the requirements of these standards. The Sub-Committee is of the view that the National Institution should be legislatively empowered to carry out these responsibilities.

The Sub-Committee notes the distinction between the state’s own monitoring obligations as required by these instruments, and the distinct role played by the National Institution in monitoring the state’s compliance and progress towards implementing the instruments it ratifies. Where the National Institution undertakes to carry out its own activities in promoting and protecting the rights contained therein, it shall do so in an entirely autonomous fashion. This does not preclude the National Institution from undertaking

joint action with the state on certain activities, such as reviewing compliance of existing domestic legislation and regulations with international human rights instruments.

Excerpt from the Paris Principles

A) Competence and responsibilities –

3. *A national institution shall, inter alia, have the following responsibilities:*

....

(b) *To promote and ensure the harmonization of national legislation regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;*

(c) *To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;*

1. Essential requirements of the Paris Principles

G.O. 1.4 Interaction with the International Human Rights System

The Paris Principles recognise that monitoring and engaging with the international human rights system, in particular the Human Rights Council and its mechanisms (Special Procedures and Universal Periodic Review) and the United Nations Human Rights Treaty Bodies, can be an effective tool for National Human Rights Institutions in the promotion and protection of human rights domestically.

Depending on existing domestic priorities and resources, effective engagement with the international human rights system may include:

- submitting parallel or shadow reports to the Universal Periodic Review, Special Procedure mechanisms and Treaty Bodies Committees;
- making statements during debates before review bodies and the Human Rights Council;
- assisting, facilitating and participating in country visits by United Nations experts, including special procedures mandate holders, treaty bodies, fact finding missions and commissions of inquiry; and
- monitoring and promoting the implementation of relevant recommendations originating from the human rights system.

In considering their engagement with the international human rights system, National Institutions are encouraged to actively engage with the Office of the United Nations High Commissioner for Human Rights (OHCHR), the ICC, their Regional NHRI Coordinating Committee and other National Institutions, as well as international and national NGOs and civil society organizations.

JUSTIFICATION

Sections A.3(d) and A.3(e) of the Paris Principles give National Institutions the responsibility to interact with the international human rights system in three specific ways. That is, National Institutions are required:

1. To contribute to country reports submitted to United Nations bodies and committees, and to regional institutions, in line with the States' treaty obligations;
2. To express an opinion on the subject, where necessary, with due respect for their independence;
3. To cooperate with the United Nations and any other organization in its system, as well as with regional human rights institutions and the National Institutions of other countries.

The Sub-Committee is of the view that National Institution engagement with international bodies is an important dimension of their work. Through their participation, National Institutions connect the national human rights enforcement system with international and regional human rights bodies. Domestically, National Institutions play a key role in raising awareness of international developments in human rights through reporting on the proceedings and recommendations of treaty-monitoring bodies, special procedures mandate holders and the Universal Periodic Review. Their independent participation in human rights mechanisms through, for example, the production of parallel reports on the

State's compliance with treaty obligations, also contributes to the work of international mechanisms in independently monitoring the extent to which states comply with their human rights obligations.

Moreover, National Institution participation in regional and international co-ordination bodies serves to reinforce their independence and effectiveness, overall. Through exchanges, National Institutions are provided with an opportunity to learn from shared experiences. This may lead to collectively strengthening each other's positions and contributing to resolving regional human rights issues.

National Institutions are encouraged to monitor the states' reporting obligations under the Universal Periodic Review and the international treaty bodies, including through dialogue with the relevant treaty body committees.

While it is appropriate for governments to consult with National Institutions in the preparation of a state's reports to human rights mechanisms, National Institutions should neither prepare the country report nor should they report on behalf of the government. National Institutions must maintain their independence and, where they have the capacity to provide information to human rights mechanisms, do so in their own right.

The Sub-Committee wishes to clarify that a National Institution's contribution to the reporting process through the submission of stakeholder or shadow reports under relevant international instruments should be done independently of the state, and may draw attention to problems, issues and challenges that may have been omitted or dealt with inadequately in the state report.

The Sub-Committee recognizes the primacy of a National Institution's domestic mandate, and that its capacity to engage with the international human rights system must depend on its assessment of domestic priorities and available resources. Within these limitations, National Institutions are encouraged to engage wherever possible and in accordance with their own strategic priorities. In so doing, the Sub-Committee highlights that National Institutions should:

- avail themselves of the assistance offered by the UN Office of the High Commissioner for Human Rights (OHCHR), which provides technical assistance and facilitates regional and global cooperation and exchanges among National Institutions; and
- engage with the ICC, their respective regional Sub-Committee representative and regional coordinating committees: African Network of NHRIs; Network of NHRIs of the Americas; Asia-Pacific Forum of NHRIs; and, European Group of NHRIs.

Excerpt from the Paris Principles

A) Competence and responsibilities –

3. A national institution shall, *inter alia*, have the following responsibilities:

....

- (d) *To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations and, where necessary, to express an opinion on the subject, with due respect for their independence;*

- (e) *To cooperate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the promotion and protection of human rights;*

1. Essential requirements of the Paris Principles

G.O. 1.5 Cooperation with other human rights bodies

Regular and constructive engagement with all relevant stakeholders is essential for NHRIs to effectively fulfil their mandates. NHRIs should develop, formalize and maintain working relationships, as appropriate, with other domestic institutions established for the promotion and protection of human rights, including sub-national statutory human rights institutions, thematic institutions, as well as civil society and non-governmental organizations.

JUSTIFICATION

In prescribing the National Institution's methods of operation, sections C(f) and C(g) of the Paris Principles require Institutions to: "*maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular ombudsmen, mediators and similar institutions)*".

The Principles specifically recognize "*the fundamental role played by the non-governmental organizations in expanding the work of the national institutions*", and therefore encourage NHRIs to, "*develop relations with the non-governmental organizations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas*".

To give full effect to these Paris Principle requirements, the Sub-Committee recommends that NHRIs should develop, formalize and maintain regular, constructive and systematic working relationships with other domestic institutions and actors established for the promotion and protection of human rights. Interaction may include the sharing of knowledge, such as research studies, best practices, training programmes, statistical information and data, and general information on its activities. For the following reasons the Sub-Committee considers such cooperation necessary to ensure the full realization of human rights nation-wide:

- *National human rights framework* – The effectiveness of a NHRI in implementing its mandate to protect and promote human rights is largely dependent upon the quality of its working relationships with other national democratic institutions such as: government departments; judicial bodies; lawyers' organizations; non-governmental organizations; the media; and other civil society associations. Broad engagement with all stakeholders may provide a better understanding of: the breadth of human rights issues across the state; the impact of such issues based on social cultural, geographic and other factors; gaps, as well as potential overlap and duplication in the setting of policy, priorities and implementation strategies. NHRIs working in isolation may be limited in their ability to provide adequate human rights protections to the public.
- *Unique position of NHRIs* – The character and identity of a NHRI serves to distinguish it from both government bodies and civil society. As independent, pluralistic institutions, NHRIs can play an important role.

- *Improved accessibility* – The NHRI's relations with civil society and NGOs is particularly important in improving its accessibility to sections of the populations who are geographically, politically or socially remote. These organizations are likely to have closer relations with vulnerable groups as they often have a more extensive network than NHRIs and are almost always likely to be closer to the ground. In this way, NHRIs may utilize civil society to provide an outreach mechanism to engage with vulnerable groups.
- *Expertise of other human rights bodies* – As a result of their specialized mandates, other human rights bodies and civil society groups may provide a NHRI with valuable advice on the major human rights issues facing vulnerable groups across the nation. As such, NHRIs are encouraged to regularly consult with other human rights bodies and civil society at all stages of programme planning and implementation, as well as policy making, to ensure the NHRI's activities reflect public concerns and priorities. Developing effective relationships with the mass media, as a section of civil society, is a particularly important tool for human rights education.
- *Formalized relationships* – The importance of formalizing clear and workable relationships with other human rights bodies and civil society, such as through public memoranda of understanding, serves as a reflection of the importance of ensuring regular, constructive working relationships and is key to increasing the transparency of the NHRI's work with these bodies.

Excerpt from the Paris Principles

C) Methods of operation –

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

...

- (f) *Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular ombudsmen, mediators and similar institutions);*
- (g) *In view of the fundamental role played by the non-governmental organizations in expanding the work of the national institutions, develop relations with the non-governmental organizations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.*

1. Essential requirements of the Paris Principles

G.O. 1.6 Recommendations by National Human Rights Institutions

Annual, special and thematic reports of National Human Rights Institutions serve to highlight key national human rights concerns and provide a means by which these bodies can make recommendations to, and monitor respect for, human rights by public authorities.

National Institutions, as part of their mandate to promote and protect human rights should undertake follow up action on recommendations contained in these reports and should publicize detailed information on the measures taken or not taken by public authorities in implementing specific recommendations or decisions.

In fulfilling its protection mandate, a National Institution must not only monitor, investigate and report on the human rights situation in the country, it should also undertake rigorous and systematic follow up activities to promote and advocate for the implementation on its recommendations and findings, and the protection of those whose rights were found to have been violated.

Public authorities are encouraged to respond to recommendations from National Institutions in a timely manner, and to provide detailed information on practical and systematic follow-up action, as appropriate, to the National Institution's recommendations.

JUSTIFICATION

The Paris Principles are not only explicit in their direction that National Institutions have the responsibility to make recommendations to public authorities on improving the national human rights situation, but also that National Institutions ensure their recommendations are widely publicized. Specifically, section A.3(a) of the Paris Principles requires National Institutions to “*submit to the Government, Parliament and any other competent body, [...] recommendations [...] on any matters concerning the promotion and protection of human rights*”, and enumerates the three areas that these recommendations shall relate to:

1. The creation or amendment of any legislative or administrative provisions, including bills and proposals;
2. Any situation of violation of human rights within a state;
3. Human rights in general and on more specific matters.

In prescribing its methods of operation, section C(c) of the Paris Principles requires National Institutions to, “*[...] publicize its opinions and recommendations*”, “*[...] directly or through any press organ [...]*”.

Finally, section D(d) of the Principles, requires National Institutions with quasi-judicial competence, that is, with the ability to hear and consider complaints, to: “*mak[e] recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations and administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.*”

The Sub-Committee is of the view that the three-fold reinforcement of the obligation to make and publicize recommendations is indicative that the drafters of the Paris Principles considered that NHRIs would be more effective when provided with the authority to monitor the extent to which public authorities follow their advice and recommendations. To give full effect to this principle, the Sub-Committee encourages governments to respond to advice and requests from National Institutions, and to indicate, within a reasonable time, how they have complied with their recommendations.

National Institutions should monitor the implementation of recommendations from annual and thematic reports, inquiries and other complaint handling processes.

Excerpt from the Paris Principles

A) Competence and responsibilities –

3. A national institution shall, *inter alia*, have the following responsibilities:

- (a) *To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicize them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:*
- (i) *Any legislative or administrative provisions, as well as provisions relating to judicial organizations, intended to preserve and extend the protection of human rights; in that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights; it shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;*
 - (ii) *Any situation of violation of human rights which it decides to take up;*
 - (iii) *The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;*
 - (iv) *Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government;*

C) Methods of operation –

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

...

- (c) *Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;*

...

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

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

...

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

1. Essential requirements of the Paris Principles

G.O. 1.7 Ensuring pluralism of the National Human Rights Institution

A diverse decision-making and staff body facilitates the National Human Rights Institution's appreciation of, and capacity to engage on, all human rights issues affecting the society in which it operates, and promotes the accessibility of the National Institutions for all citizens.

Pluralism refers to broader representation of national society. Consideration must be given to ensuring pluralism in the context of gender, ethnicity or minority status. This includes, for example, ensuring the equitable participation of women in the National Institution.

The Sub-Committee notes there are diverse models for ensuring the requirement of pluralism in the composition of the National Institutions as set out in the Paris Principles. For example:

- a) Members of the decision-making body represent different segments of society as referred to in the Paris Principles. Criteria for membership of the decision-making body should be legislatively established, be made publicly available and subject to consultation with all stakeholders, including civil society. Criteria that may unduly narrow and restrict the diversity and plurality of the composition of the National Institution's membership should be avoided;
- b) Pluralism through the appointment procedures of the governing body of the National Institutions, 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 staff that are representative of the diverse segments of society. This is particularly relevant for single member Institutions, such as an Ombudsperson.

JUSTIFICATION

Ensuring the pluralistic composition of the National Institution is a prime requirement of the Paris Principles as a guarantee of institutional independence. Section B.1 states: "*The composition of the national institution and the appointment of its members [...] shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights.*" The same provision highlights that pluralism is intended to promote effective cooperation with an indicative list of stakeholders representing:

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

- (c) *Universities and qualified experts;*
- (d) *Parliament;*
- (e) *Government departments*

The Sub-Committee considers the pluralistic composition of the National Institution to be fundamentally linked to the requirement of independence, credibility, effectiveness and accessibility.

Where the members and staff of National Institutions are representative of a society's social, ethnic, religious and geographic diversity, the public are more likely to have confidence that the National Institution will understand and be more responsive to its specific needs. Additionally, the meaningful participation of women at all levels is important to ensure an understanding of, and access for, a significant proportion of the population. Likewise, in multilingual societies, the Institution's capacity to communicate in all languages is key to its accessibility.

The diversity of the membership and staff of a National Institution, when understood in this way, is an important element in ensuring the effectiveness of a National Institution and its real and perceived independence and accessibility.

Ensuring the integrity and quality of members is a key factor in the effectiveness of the Institution. For this reason, selection criteria that ensure the appointment of qualified and independent decision-making members should be legislatively established and made publicly available prior to appointment.

The Sub-Committee recommends that the adoption of such criteria be subject to consultation with all stakeholders, including civil society, to ensure the criteria chosen is appropriate and does not exclude specific individuals or groups.

The Sub-Committee cautions that criteria that may be unduly narrow and restrict the diversity and plurality of the composition of the National Institution's membership and staff body, such as the requirement to belong to a specific profession, may limit the capacity of the National Institution to fulfil effectively all its mandated activities. If staff and members have a diverse range of professional backgrounds, this will help to ensure that issues are not narrowly framed.

Excerpt from the Paris Principles

B) Composition and guarantees of independence and pluralism –

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

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

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

1. Essential requirements of the Paris Principles

G.O. 1.8 Selection and appointment of the decision-making body of National Human Rights Institutions

It is critically important to ensure the formalisation of a clear, transparent and participatory selection and appointment process of the National Human Rights Institution's decision-making body in relevant legislation, regulations or binding administrative guidelines, as appropriate. A process that promotes merit-based selection and ensures pluralism is necessary to ensure the independence of, and public confidence in, the senior leadership of a National Institution. Such a process should include requirements to:

- a) Publicize vacancies broadly;
- b) Maximize the number of potential candidates from a wide range of societal groups;
- c) Promote broad consultation and/or participation in the application, screening, selection and appointment process
- d) Assess applicants on the basis of pre-determined, objective and publicly available criteria;
- e) Select members to serve in their own individual capacity rather than on behalf of the organization they represent.

JUSTIFICATION

Section B.1 of the Paris Principles specifies that: *"The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights."*

Section B.1 further enumerates which groups may be included in this process. These are: "representatives of:

- (a) Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;
- (b) Trends in philosophical or religious thought;
- (c) Universities and qualified experts;
- (d) Parliament;
- (e) Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity)."

The Sub-Committee interprets the reference to an election or other like process, together with the reference to broad participation, as requiring a clear, transparent, merit based and participatory selection and appointment process.

Such a process is fundamental in ensuring the independence and effectiveness of, and public confidence in, the National Institution.

For this reason, it is important that the selection process be characterized by openness and transparency. That is, it should be under the control of an independent and credible

body and involve open and fair consultation with NGOs and civil society. Not only is this a means of developing a good relationship with these bodies, but consideration of the expertise and experience of NGOs and civil society is likely to result in a National Institution with greater public legitimacy.

Advertising vacancies broadly maximises the potential number of candidates, thereby promoting pluralism.

Promoting broad consultation and participation in the application, screening, selection and appointment process promotes transparency, pluralism and public confidence in the process, the successful candidates and the National Institution.

The assessment of applicants on the basis of pre-determined, objective and publicly available criteria promotes the appointment of merit based candidates, limits the capacity for undue interference in the selection process and serves to ensure the appropriate management and effectiveness of the National Institution.

Selecting members to serve in their own individual capacity rather than on behalf of the organization they represent is likely to result in an independent and professional membership body.

It is recommended that the selection and appointment process, bearing the hallmarks described above, be formalized in relevant legislation, regulations or binding administrative guidelines, as appropriate.

Excerpt from the Paris Principles

B) Composition and guarantees of independence and pluralism –

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

- (a) Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;*
- (b) Trends in philosophical or religious thought;*
- (c) Universities and qualified experts;*
- (d) Parliament;*
- (e) Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).*

1. Essential requirements of the Paris Principles

G.O. 1.9 Government representatives on National Human Rights Institutions

The Sub-Committee notes that the Paris Principles require a National Human Rights Institution to be independent from government in its structure, composition and method of operation.

With regard to the composition of a National Institution, this requires that members of a ruling political party or coalition, and representatives of government agencies should not, in general, be represented on the governing body of the National Institution.

Should they do so, a National Institution's legislation should clearly indicate that such persons participate only in an advisory capacity. In order to further promote independence in decision making, and avoid conflicts of interest, a National Institution's rules of procedure should establish practices to ensure that such persons are unable to inappropriately influence decision-making by, for example, excluding them from attending parts of meetings where final deliberations and strategic decisions are made.

The participation of members of a ruling political party or coalition, or representatives of government agencies, should be restricted to those whose roles and functions are of direct relevance to the mandate and functions of the National Institution, and whose advice and cooperation may assist the National Institution in fulfilling its mandate. In addition, the number of such representatives should be limited and should not exceed the number of other members of the National Institution's governing body.

JUSTIFICATION

Paris Principle C(a) states that a National Institution must be able to "freely consider any question falling within its competence".

Paris Principle B.2 states that the requirement of an appropriate infrastructure is intended to ensure the National Institution is "independent of the government".

Paris Principle B.3 requires that members of a National Institution are appointed officially, thereby promoting a stable mandate "without which there can be no real independence".

Paris Principles B.1 specifically provides that representatives of government departments can participate "only in an advisory capacity".

By clearly promoting independence in the composition, structure and method of operation of a National Institution, these provisions seek to avoid any possible interference in the National Institution's assessment of the human rights situation in the State and the subsequent determination of its strategic priorities. It follows therefore that members of parliament, and especially those who are members of the ruling political party or coalition, or representatives of government agencies, should not in general be represented on, nor should they participate in decision making, since they hold positions that may at times conflict with an independent National Institution.

The SCA acknowledges the value in developing and maintaining effective links with relevant ministers and government agencies, particularly where cooperation will assist in promoting the National Institution's mandate. However, it stresses that this must be done in a way that ensures both real and perceived independence of decision making and operation, and avoids a conflict of interest. The creation of Advisory Committees is an example of a mechanism where such relationships can be maintained without impacting on the National Institution's independence.

The SCA notes that Paris Principle B.1 specifically states that representatives of government agencies have only an advisory role, while no such restriction is explicitly stated in relation to representatives of parliament. It notes, however, that in providing an indicative list of relevant stakeholders, Paris Principle B.1 envisages either the "presence" or the ability to establish "effective cooperation" with such representatives. Given the explicit requirements for independence stated throughout the Paris Principles, examples of which are referenced above, the Sub-Committee is of the view that a similar restriction must apply to members of parliament, and particularly those who are members of the ruling political party or coalition.

Excerpt from the Paris Principles

B) Composition and guarantees of independence and pluralism –

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

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

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

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

(C) Methods of operation

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

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

1. Essential requirements of the Paris Principles

G.O. 1.10 Adequate funding of National Human Rights Institutions

To function effectively, a National Human Rights Institution must be provided with an appropriate level of funding in order to guarantee its independence and its ability to freely determine its priorities and activities. It must also have the power to allocate funding according to its priorities. In particular, adequate funding should, to a reasonable degree, ensure the gradual and progressive realisation of the improvement of the Institution's operations and the fulfilment of its mandate.

Provision of adequate funding by the State should, as a minimum, include the following:

- a) the allocation of funds for premises which are accessible to the wider community, including for persons with disabilities. In certain circumstances, in order to promote independence and accessibility, this may require that offices are not co-located with other government agencies. Where possible, accessibility should be further enhanced by establishing a permanent regional presence;
- b) salaries and benefits awarded to its staff comparable to those of civil servants performing similar tasks in other independent Institutions of the State;
- c) remuneration of members of its decision-making body (where appropriate);
- d) the establishment of well-functioning communications systems including telephone and internet;
- e) the allocation of a sufficient amount of resources for mandated activities. Where the National Institution has been designated with additional responsibilities by the State, additional financial resources should be provided to enable it to assume the responsibilities of discharging these functions.

Funding from external sources, such as from international development partners, should not compose the core funding of the National Institution, as this is the responsibility of the State. However, the Sub-Committee recognizes the need for the international community, in specific and rare circumstances, to continue to engage and support a National Institution in order to ensure it receives adequate funding until such time when the State will be able to do so. In such unique cases National Institutions should not be required to obtain approval from the state for external sources of funding, which may otherwise detract from its independence. Such funds should not be tied to donor-defined priorities but rather to the pre-determined priorities of the National Institution.

Government funding should be allocated to a separate budget line item applicable only to the National Institution. Such funding should be regularly released and in a manner that does not impact adversely on its functions, day-to-day management and retention of staff.

While a National Institution should have complete autonomy over the allocation of its budget, it is obliged to comply with the financial accountability requirements applicable to other independent agencies of the State.

JUSTIFICATION

Section B.2 of the Paris Principles addresses the requirement for National Institutions to be adequately funded as a guarantee of their independence. The purpose of such funding and a definition of what it entails is stated as follows: “*The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.*”

While the provision of “adequate funding” is determined in part by the national financial climate, States have the duty to protect the most vulnerable members of society, who are often the victims of human rights violations, even in times of severe resource constraints. As such, the Sub-Committee believes that it is nevertheless possible to identify certain aspects of this Paris Principles requirement that must be taken into account in any particular context. They include the following:

- a) *Accessibility to the public* – This is particularly important for the most vulnerable sections of society, who would otherwise have particular difficulty bringing attention to any violation of their human rights.
 - As many vulnerable persons may be geographically remote from the major cities where most National Institutions are located, establishing a regional presence increases the accessibility of National Institutions, giving them as wide a geographical reach as possible, and enabling them to have full national coverage for the receipt of complaints. It is essential that where regional offices exist, they be adequately resourced to ensure their effective functioning.
 - Another means of increasing the accessibility of National Institutions to vulnerable groups is to ensure that their premises are neither located in wealthy areas nor in or nearby government buildings. This is particularly important where government buildings are protected by military or security forces. Where National Institution’s offices are too close to government offices, this may not only compromise the perceived independence of the Institution but also risk deterring complainants.
- b) *National Institution staff* – Salaries and benefits awarded to National Institution staff should be comparable to those of civil servants performing similar tasks in other independent Institutions of the State.
- c) *National Institution members* – Where appropriate, members of the National Institution’s decision-making body should receive remuneration equivalent to those individuals with similar responsibilities in other independent Institutions of the State.
- d) *Communications infrastructure* – The establishment of communications systems, including telephone and internet, is essential for the public to access the National Institutions’ office. A well-functioning communications structure, including simplified complaints-handling procedures which may include the receipt of complaints orally in minority languages, increases the reach of vulnerable groups to the Institution’s services.
- e) *Allocation for activities* – National Institutions should receive adequate public funding to perform their mandated activities. An insufficient budget can render an

Institution ineffective or limit it from reaching its full effectiveness. Where the National Institution has been designated with additional responsibilities by the State, such as the role of National Preventive or Monitoring Mechanism pursuant to an international human rights instrument, additional financial resources should be provided to enable it to discharge these functions.

Donor funding

As it is the responsibility of the State to ensure the National Institution's core budget, the Sub-Committee takes the view that funding from external sources, such as from international development partners, should not constitute the Institution's core funding. However, it recognizes the need for the international community, in specific and rare circumstances, to continue to engage and support a National Institution in order to ensure it receives adequate funding until such time when the State will be able to do so. This is particularly applicable in post-conflict States. In these circumstances, National Institutions should not be required to obtain approval for external sources of funding, as this requirement may pose a threat to its independence.

Financial systems and accountability

Financial systems should be such that the National Institution has complete financial autonomy as a guarantee of its overall freedom to determine its priorities and activities. National law should indicate from where the budget of the National Institution is allocated, ensuring the appropriate timing of release of funding, in particular to ensure an appropriate level of skilled staff. This should be a separate budget line over which it has absolute management and control. The National Institution has the obligation to ensure the coordinated, transparent and accountable management of its funding through regular public financial reporting and a regular annual independent audit.

Excerpt from the Paris Principles

B) Composition and guarantees of independence and pluralism –

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

1. Essential requirements of the Paris Principles

G.O. 1.11 Annual reports of National Human Rights Institutions

Annual, special and thematic reports serve to highlight key developments in the human rights situation in a country and provide a public account, and therefore public scrutiny, of the effectiveness of a National Human Rights Institution. The reports also provide a means by which a National Institution can make recommendations to, and monitor respect for, human rights by government.

The importance for a National Institution to prepare, publicize and widely distribute an annual report on its national situation with regard to human rights in general, and on more specific matters, is stressed. This report should include an account of the activities undertaken by the National Institution to further its mandate during that year and should state its opinions, recommendations and proposals to address any human rights issues of concern.

The SCA considers it important that the enabling laws of a National Institution establish a process whereby the Institution's reports are required to be widely circulated, discussed and considered by the legislature. It would be preferable if the National Institution has an explicit power to table reports directly in the legislature, rather than through the Executive, and in so doing to promote action on them.

Where a National Institution has made an application for accreditation or, re-accreditation, it will be required to submit a current annual report, that is, one from the preceding year's reporting period. Where the published report is not in one of the ICC languages, a certified translation of the key elements of the report must be submitted in its application for accreditation. The Sub-Committee finds it difficult to assess the effectiveness of a National Institution and its compliance with the Paris Principles in the absence of a current annual report.

JUSTIFICATION

Section A.3(a) of the Paris Principles requires National Institutions to be responsible for, "*submit[ting] to the Government, Parliament and any other competent body, [...] reports on any matters concerning the promotion and protection of human rights.*" It states that institutions "*may decide to publicize them*", and enumerates the four areas that these reports shall relate to:

- (i) Recommendations on the creation or amendment of any legislative or administrative provisions, including bills and proposals;
- (ii) Any situation of violation of human rights;
- (iii) Human rights in general and on more specific matters; and
- (iv) Proposals to put an end to human rights violations, and its opinion on the proposals and reaction of government to these situations.

With a view to assisting National Institutions to fulfil their obligations pursuant to this provision of the Paris Principles, the Sub-committee provides the following guidance on its requirements, as based on international proven practices:

- *Purpose of reports* – Annual, special and thematic reports serve to highlight key developments in the human rights situation in a country and provide a public

account, and therefore public scrutiny, of the effectiveness of a National Institution. The reports also provide a means by which a National Institution can make recommendations to, and monitor respect for, human rights by government;

- *Content of reports* – The annual report of a National Institution is a vital public document that not only provides a regular audit of the government’s performance on human rights but also an account of what the National Institution has done. As such, this report should include an account of the activities undertaken by the National Institution to further its mandate during that year and should state its opinions, recommendations and proposals to address any human rights issues of concern, and the government’s action on its recommendations;
- *Publication of reports* – It is important for a National Institution to publicize and widely distribute an annual report on its national situation with regard to human rights in general, and on more specific matters. It is vitally important that all the findings and recommendations of the Institution be publicly available as this increases the transparency and public accountability of the Institution. In publishing and widely disseminating its annual report, the National Institution will play an extremely important role in educating the public on the situation of human rights violations in the country;
- *Submission of reports* – The National Institution should be given the legislative authority to table its reports directly to the legislature, rather than through the Executive. The legislature should be required to discuss and consider the reports of the National Institution, so as to ensure that its recommendations are properly considered by relevant public authorities.

The Sub-Committee finds it difficult to review the accreditation status of a National Institution in the absence of a current annual report, that is, a report dated not earlier than one year before the time it is scheduled to undergo an accreditation review by the Sub-Committee.

Excerpt from the Paris Principles

A) Competence and responsibilities –

3. A national institution shall, *inter alia*, have the following responsibilities:

a) *To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicize them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:*

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

recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;

- (ii) Any situation of violation of human rights which it decides to take up;*
- (iii) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;*
- (iv) Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government;*

2. Practices that directly promote Paris Principles compliance

G.O. 2.1 Guarantee of tenure for members of the National Human Rights Institution decision-making body

The SCA is of the view that in order to address the Paris Principles requirements for a stable mandate, without which there can be no independence, the enabling legislation of a National Human Rights Institution must contain an independent and objective dismissal process, similar to that accorded to members of other independent State agencies.

The dismissal must be made in strict conformity with all the substantive and procedural requirements as prescribed by law.

The grounds for dismissal must be clearly defined and appropriately confined to only those actions which impact adversely on the capacity of the member to fulfil their mandate.

Where appropriate, the legislation should specify that the application of a particular ground must be supported by a decision of an independent body with appropriate jurisdiction.

Dismissal should not be allowed based solely on the discretion of appointing authorities.

Such requirements ensure the security of tenure of the members of the governing body and are essential to ensure the independence of, and public confidence in, the senior leadership of a National Institution.

JUSTIFICATION

In prescribing the conditions to ensure a stable mandate for members of the National Institution decision-making body, section B.3 of the Paris Principles is silent on the scenario of their dismissal. Nonetheless, it is the view of the Sub-Committee that ensuring the security of tenure of National Institution members is consistent with the Paris Principles requirements regarding the composition of the National Institution and its guarantees of independence and pluralism.

Appropriate procedural protections and due process are essential aspects of all human rights but are especially pertinent in relation to a matter such as ensuring the independence of the National Institution and its membership. That is, National Institution members must be able to undertake their responsibilities without fear and without inappropriate interference from the State or other actors. In this light, the Sub-Committee highlights the following:

- Members may be dismissed only on serious grounds of misconduct or incompetence, in accordance with fair procedures ensuring objectivity and impartiality set out in the national law.
- The dismissal of members by the Executive, such as before the expiry of the term for which they have been appointed, without any specific reasons given to them and without effective functional immunity being available to contest the dismissal is incompatible with the independence of the National Institution.

Excerpt from the Paris Principles

B) Composition and guarantees of independence and pluralism –

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

2. Practices that directly promote Paris Principles compliance

G.O. 2.2 Full-time members of a National Human Rights Institution

The enabling law of the National Human Rights Institution should provide that members of its decision-making body include full-time remunerated members. This would assist in ensuring:

- a) the independence of the NHRI free from actual or perceived conflict of interests;
- b) a stable tenure for the members;
- c) regular and appropriate direction for staff; and,
- d) the ongoing and effective fulfilment of the NHRI's functions.

An appropriate minimum term of appointment is crucial in promoting the independence of the membership of the NHRI, and to ensure the continuity of its programs and services. An appointment period of three years is considered to be the minimum that would be sufficient to achieve these aims. As a proven practice, the Sub-Committee encourages that a term of between three and seven years with the option to renew once be provided for in the NHRI's enabling law.

A further requirement in ensuring the stability of a member's mandate (and the independence of a NHRI and its members) is the requirement that the terms and conditions of a member's service cannot be modified to their detriment during their period of appointment. Additionally, such terms and conditions should be equivalent to those with similar responsibilities in other independent State agencies.

JUSTIFICATION

Section B.3 of the Paris Principles sets out the requirements to ensure a stable mandate for the members of the National Institution. It specifies that, "*their appointment shall be effected by an official act which shall establish the specific duration of the mandate.*" It further clarifies that, "*this mandate may be renewable [...]*".

Although the provision is silent on the duration of the appointment, the Sub-Committee is of the view that specifying an appropriate minimum term in the National Institution's enabling law is crucial in both promoting the independence of the membership and of the National Institution, and to ensure the continuity of its programs and services. Consistent with international good practices, it therefore recommends an appointment period that extends between three and seven years with the option to renew once.

In prescribing the conditions to ensure a stable mandate for members of the National Institution's decision-making body, section B.3 of the Paris Principles does not address the issue of whether members are required to be full-time or whether they are to be remunerated. The Sub-Committee is of the view that the appointment of members on a full-time basis promotes stability, an appropriate degree of management and direction, and limits the risk of members being exposed to conflicts of interest upon taking office. Furthermore, it clearly establishes the terms and conditions of service, including proper remuneration of members, and serves to reinforce their independence and integrity.

Excerpt from the Paris Principles

B) Composition and guarantees of independence and pluralism –

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

2. Practices that directly promote Paris Principles compliance

G.O. 2.3 Guarantee of functional immunity

It is strongly recommended that provisions be included in national law to protect legal liability of members of the National Human Rights Institution's decision-making body for the actions and decisions that are undertaken in good faith in their official capacity.

Such functional immunity reinforces the independence of a National Institution, promotes the security of tenure of its decision-making body, and its ability to engage in critical analysis and commentary on human rights issues.

It is acknowledged that no office holder should be beyond the reach of the law and thus, in certain exceptional circumstances it may be necessary to lift immunity. However, the decision to do so should not be exercised by an individual, but rather by an appropriately constituted body such as the superior court or by a special majority of parliament. It is recommended that national law provides for well-defined circumstances in which the functional immunity of the decision-making body may be lifted in accordance with fair and transparent procedures.

JUSTIFICATION

The Paris Principles do not specifically refer to the term "functional immunity". It is now widely accepted that the entrenchment of this provision in law is necessary for the reason that this protection, being one that is similar to that which is granted to judges under most legal systems, is an essential hallmark of institutional independence.

Providing members of the National Institution's decision-making body with functional immunity, that is, specifically for actions and decisions undertaken in good faith in their official capacity, protects them from individual legal proceedings from anyone who objects to a decision of the National Institution.

It is understood that functional immunity is not absolute and should not cover circumstances where National Institution members abuse their official function or act in bad faith. In well-defined circumstances, the democratically-elected authority, such as the legislature, to which the National Institution is accountable, should have the power to lift immunity in accordance with a fair and transparent process.

Excerpt from the Paris Principles

B) Composition and guarantees of independence and pluralism –

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

C) Methods of operation –

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

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

...

2. Practices that directly promote Paris Principles compliance

G.O. 2.4 Recruitment and retention of National Human Rights Institution staff

National Human Rights Institutions should be legislatively empowered to determine the staffing structure, the skills required to fulfil the Institution's mandate, set other appropriate criteria (such as diversity), and select their staff in accordance with national law.

Staff should be recruited according to an open, transparent and merit based selection process that ensures pluralism and a staff composition that possesses the skills required to fulfil the Institution's mandate. Such a process promotes the independence and effectiveness of, and public confidence in the National Institution.

National Institution staff should not be seconded or re-deployed from branches of the public service.

JUSTIFICATION

Pursuant to section B.2 of the Paris Principles, a National Institution is required to be provided with adequate funding, the purpose of which is "*to enable it to have its own staff [...] in order to be independent of the Government*". The Sub-committee interprets this provision to mean that:

- (i) National Institutions should possess the legislative authority to hire their own staff according to written recruitment guidelines based on merit and conducted through a transparent selection process using published criteria.
- (ii) National Institutions should be resourced in such a manner as to permit the employment and retention of staff with the requisite qualifications and experience to fulfil the Institution's mandate. Additionally, such resources should allow for salary levels, terms and conditions of employment applicable to the staff of the National Institution to be equivalent to those of similarly independent State agencies and members of the public service undertaking similar work and with similar qualifications and responsibilities.

In this way, the Sub-Committee recognises that fulfilling the requirements of Paris Principle B.2 is fundamental to ensuring the independence and efficient functioning of a National Institution. Where the National Institution lacks either adequate resources or the legislative ability to recruit its own staff, particularly at the senior-level, and these are instead appointed by the Executive, this undermines the principle of institutional independence.

Excerpt from the Paris Principles

B) Composition and guarantees of independence and pluralism –

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

2. Practices that directly promote Paris Principles compliance

G.O. 2.5 Staffing of the National Human Rights Institution by secondment

A fundamental requirement of the Paris Principles is that a National Human Rights Institution is, and is perceived to be, able to operate independent of government interference. Where a National Institution's staff members are seconded from the public service, and in particular where this includes those at the highest level in the National Institution, it brings into question the capacity of the National Institution to function independently.

A National Institution must have the authority to determine its staffing profile and to recruit its own staff.

In accordance with the relevant Paris Principle, the Sub-Committee is of the view that:

- a) Senior level posts should not be filled with secondees;
- b) The number of secondees should not exceed 25% except in exceptional or relevant circumstances.

JUSTIFICATION

Pursuant to section B.2 of the Paris Principles, a National Institution is required to be provided with adequate funding, the purpose of which is "*to enable it to have its own staff [...] in order to be independent of the Government*".

Restrictions on the capacity of a National Institution to hire its own staff, or requirements to hire or accept seconded personnel from government agencies, except in exceptional or relevant circumstances, impacts on the real and perceived independence of an Institution and may impede its ability to conduct its own affairs in an autonomous manner, free from government interference. This situation is particularly compounded where senior staff members, who set the direction and foster the culture of the National Institution, are seconded.

The Sub-Committee highlights that this requirement should not be seen to limit the capacity of a National Institution to hire a public servant with the requisite skills and experience, and indeed acknowledges that there may be certain positions within a National Institution where such skills are particularly relevant. However, the recruitment process for such positions should always be open to all, clear, transparent, merit-based and at the sole discretion of the National Institution.

Excerpt from the Paris Principles

B) Composition and guarantees of independence and pluralism –

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

2. Practices that directly promote Paris Principles compliance

G.O. 2.6 National Human Rights Institutions during the situation of a coup d'état or a state of emergency

In the situation of a coup d'état or a state of emergency, it is expected that a National Human Rights Institution will conduct itself with a heightened level of vigilance and independence, and in strict accordance with its mandate.

National Institutions are expected to promote and ensure respect for human rights, democratic principles and the strengthening of the rule of law in all circumstances and without exception. In situations of conflict or a state of emergency, this may include monitoring, documenting, issuing public statements and releasing regular and detailed reports through the media in a timely manner to address urgent human rights violations.

JUSTIFICATION

The Paris Principles do not explicitly give guidance on the expected conduct of a National Institution when its country is experiencing a state of emergency or coup d'état. However, Paris Principle A.1 clearly specifies that National Institutions shall have the responsibility to promote and protect human rights. Furthermore, Paris Principle A.3 specifies the powers and responsibilities of a National Institution including:

- reporting on human rights violations (Paris Principle A.3(a)(ii) –(iii));
- monitoring and reporting on government action or inaction (Paris Principle A.3(a)(iv)) ; and
- publicizing its views on any matters concerning the promotion and protection of human rights (Paris Principle A.3(a)). This responsibility is further elaborated in Paris Principle C(c), which provides the capacity to address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations.

While the impact of emergency circumstances varies from one case to another, the Sub-Committee is aware that they almost always have a dramatic impact on the rights recognized in international human rights standards, particularly on vulnerable groups. Disruptions to peace and security in no way nullify or diminish the relevant obligations of the National Institution. As in other comparable situations, those obligations assume greater practical importance in times of particular hardship. In such circumstances, the protection of human rights becomes all the more important, and National Institutions must ensure that individuals have accessible and effective remedies to address human rights violations.

National Institutions, as independent and impartial bodies, play a particularly important role by investigating allegations of violations promptly, thoroughly and effectively. As such, National Institutions will be expected to promote and ensure respect for human rights, democratic principles and strengthening the rule of law in all circumstances without exception. This may include issuing public statements and releasing regular and detailed reports through the media in a timely manner to address urgent human rights violations.

In order to fulfil its obligations, it is necessary that the National Institution continue to conduct itself with a heightened level of vigilance and independence in the exercise of its mandate. The Sub-Committee will scrutinize the extent to which the National Institution

concerned has taken steps to the maximum of its available resources to provide the greatest possible protection for the human rights of each individual within its jurisdiction.

Excerpt from the Paris Principles

A. Competence and responsibilities –

1. A national institution shall be vested with competence to promote and protect human rights.

3. A national institution shall, *inter alia*, have the following responsibilities:

(a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicize them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:

...

(ii) Any situation of violation of human rights which it decides to take up;

(iii) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;

(iv) Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government;

...

C. Methods of operation –

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

...

(c) Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;

2. Practices that directly promote Paris Principles compliance

G.O. 2.7 Limitation of power of National Human Rights Institutions due to national security

The scope of the mandate of a National Human Rights Institution may be restricted for national security reasons. While this limitation is not inherently contrary to the Paris Principles, it should not be unreasonably or arbitrarily applied and should only be exercised under due process.

JUSTIFICATION

According to section A.2 of the Paris Principles, a National Institution should possess, “*as broad a mandate as possible*”. To give full effect to this Principle, the Sub-Committee recommends that this provision be understood in the widest sense. That is, the mandate of the National Institution should extend to protect the public from acts and omissions of public authorities, including officers and personnel of the military, police and special security forces. Where such public authorities, who may potentially have a great impact on human rights, are excluded from the jurisdiction of the National Institution, this may serve to undermine the credibility of the Institution.

National Institutions, in their analysis of the human rights situation in the country, should be authorized to fully investigate all alleged human rights violations, regardless of which State officials are responsible. This should include the ability to have unannounced and unimpeded access to inspect and examine any public premises, documents, equipment and assets without prior written notice. Although the authority of National Institutions to undertake such an investigation may be restricted for national security reasons, such restriction should not be unreasonably or arbitrarily applied and should be exercised under due process.

Excerpt from the Paris Principles

A) Competence and responsibilities –

2. *A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.*

2. Practices that directly promote Paris Principles compliance

G.O. 2.8 Administrative regulation of National Human Rights Institutions

The classification of a National Human Rights Institution as an independent State agency has important implications for the regulation of certain practices, including reporting, recruitment, funding and accounting.

Where a State has developed uniform rules or regulations to ensure State agencies are properly accountable for their use of public funds, the application of such rules or regulations on a National Institution is not considered inappropriate provided they do not compromise the National Institution's ability to perform its role independently and effectively.

The administrative requirements imposed on a National Institution must be clearly defined and should be no more onerous than those applicable to other independent of State agencies.

JUSTIFICATION

Section B.2 of the Paris Principles considers the "*adequate funding*" of a National Institution as a necessary guarantee of its independence. The purpose of this funding is: "*in order to be independent of the Government and not to be subject to financial control which might affect its independence.*" Such a provision is not, however, intended to limit the application of laws that require an appropriate level of financial accountability by public agencies.

To ensure respect for the principle of independence in circumstances where certain aspects of the administration of a National Institution is regulated by the Government, the Sub-Committee cautions that such regulation must not compromise the National Institution's ability to perform its role independently and effectively.

It may therefore be appropriate for the State to impose general regulatory requirements to promote:

- fair, transparent and merit based selection processes;
- financial propriety in the use of public funds;
- operational accountability.

Such regulation should not, however, extend to requiring a National Institution to seek government approval prior to carrying out its legislatively mandated activities, since this may compromise its independence and autonomy. Such practice is inconsistent with the exercise of the protection and promotion function that a National Institution is established to carry out in an independent and unfettered manner. For this reason, it is important that the relationship between the Government and the National Institution be clearly defined so as to avoid any undue Government interference.

Excerpt from the Paris Principles

B) Composition and guarantees of independence and pluralism –

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

2. Practices that directly promote Paris Principles compliance

G.O. 2.9 Assessing National Human Rights Institutions as National Preventive and National Monitoring Mechanisms

Where, pursuant to an international human rights instrument, a national human rights institution has been designated as, or as part of, a national preventive or monitoring mechanism, the Sub-Committee on Accreditation will assess whether the applicant has provided sufficient information to demonstrate that it is carrying out its functions in compliance with the Paris Principles.

Depending on the specific roles and functions ascribed to the NHRI, in undertaking this assessment, the Sub-Committee will consider, as appropriate:

- whether a formal legal mandate has been provided;
- whether the mandate has been appropriately defined to encompass the promotion and protection of all relevant rights contained in the international instrument;
- whether the staff of the NHRI possess the appropriate skills and expertise;
- whether the NHRI has been provided with additional and adequate resources;
- whether there is evidence that the NHRI is effectively undertaking all relevant roles and functions as may be provided in the relevant international instrument. Depending on the instrument and the mandate of the national human rights institution, such activities might include monitoring and investigation, the provision of constructive and/or critical advice to government and in particular, systematic follow up of its recommendations and findings on alleged human rights violations.¹

The Sub-Committee may also consider, as it thinks appropriate, any guidance that has been developed by the relevant treaty body.²

JUSTIFICATION

In recent years, international human rights instruments have begun to incorporate a requirement that States Parties create, or designate an existing domestic agency (or agencies) with responsibility for monitoring and promoting the objectives of that instrument.

¹ With regard to National Preventive Mechanisms under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, see for example Articles 17 – 13 of Part III of that instrument and the rights protected in the parent Convention. With regard to National Monitoring Mechanisms under the Convention on the Rights of People with Disabilities, see for example principles and functions outlined in Articles 3, 4, 31, 32, 33 and 35, and the rights protected in Articles 3 – 30.

² With regard to National Preventive Mechanisms under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, see for example the *Preliminary Guidelines for the Ongoing Development of National Preventive Mechanisms* developed by the Sub-Committee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and contained in paragraphs 24 – 29 of its First Annual Report (February 2007 – March 2008). (Ref: CAT/C/40/2).

These international instruments often specify particular roles and functions to be carried out by the relevant domestic agency or agencies, which are variously referred to as national preventive or monitoring mechanisms.

In response, States have often chosen to designate their NHRI as, or as part of, its national preventive or monitoring mechanisms. In so doing, the State signals that the NHRI has a primary role to play in the promotion and protection of rights contained in those instruments.

In assessing whether an NHRI is carrying out these function in accordance with the Paris Principles, the SCA will consider a range of factors that impact on the capacity of a NHRI to function independently and effectively. With regard to the requirement for a specific legal mandate, this may depend on the scope of a NHRI existing mandate and the breadth of any additional roles and functions ascribed to it as a national preventive or monitoring mechanisms. Where additional powers are proposed, such as specific powers to enter, monitor, investigate and report on places of detention, and these go beyond the powers currently available to the NHRI, a more clearly defined legal mandate may be required in order to ensure the NHRI is able to undertake its role effectively and free from interference.

In undertaking its assessment, the Sub-Committee will also consider any guidelines developed by the relevant treaty body. It notes, however, that its role is to assess a NHRI against the Paris Principles, whereas the relevant treaty body undertakes its assessment of a national preventive or monitoring mechanism against the relevant international instrument upon which it is based. Guidelines developed by the relevant treaty body have, in general, been drafted for the broad range of agencies that may be designated as national preventive or monitoring mechanisms, and may not always be directly applicable to a national human rights institution.

Excerpt from the Paris Principles

(A) Competence and responsibilities.

...

3. A national institution shall, inter alia, have the following responsibilities:

(a) To submit to the Government, Parliament and any other competent body . . . opinions, recommendations, proposals and reports on . . . :

(ii) Any situation of violation of human rights which it decides to take up;

(b) *To promote and ensure the harmonization of national legislation regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;*

(c) *To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;*

(d) To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations and, where necessary, to express an opinion on the subject, with due respect for their independence;

(e) To cooperate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the promotion and protection of human rights;

...

2. Practices that directly promote Paris Principles compliance

G.O. 2.10 The quasi-judicial³ competency of National Human Rights Institutions (complaints-handling)

When a NHRI is provided with a mandate to receive, consider and/or resolve complaints alleging violations of human rights, it should be provided with the necessary functions and powers to adequately fulfil this mandate.

Depending on its mandate, such powers and functions might include:

- The ability to receive complaints against both public and private bodies in its jurisdiction;
- The ability to receive complaints that are filed by persons on behalf of the alleged victim(s), where consent is given;
- The ability to commence a complaint on its own initiative;
- The ability to investigate complaints, including the power to compel the production of evidence and witnesses, and to visit places of deprivation of liberty;
- The ability to protect complainants from retaliation for having filed a complaint;
- The ability to protect witnesses from retaliation for having provided evidence in relation to a complaint;
- The ability to seek an amicable and confidential settlement of the complaint through an alternative dispute resolution process;
- The ability to settle complaints through a binding determination;
- The ability to refer its findings to courts of law or specialized tribunals for adjudication;
- The ability to refer complaints falling beyond its jurisdiction or in a concurrent jurisdiction to the appropriate decision-making body;
- The ability to seek enforcement through the court system of its decisions on the resolution of complaints;
- The ability to follow up and monitor the implementation of its decisions on the resolution of complaints.
- The ability to refer its findings to government in situations where a complaint provides evidence of a widespread or systematic violation of human rights.

In fulfilling its complaint handling mandate, the NHRI should ensure that complaints are dealt with fairly, transparently, efficiently, expeditiously, and with consistency. In order to do so, a NHRI should:

- Ensure that its facilities, staff, and its practices and procedures, facilitate access by those who allege their rights have been violated and their representatives;
- Ensure that its complaint handling procedures are contained in written guidelines, and that these are publicly available.

³The term 'quasi-jurisdictional competence' as cited in the Paris Principles has been recognized as a translation error. It is instead meant to be understood as 'quasi-judicial competence' and it refers to a NHRI's complaints-handling mandate and its related functions and powers.

JUSTIFICATION

The Paris Principles do not require that NHRI have the ability to receive complaints or petitions from individuals or groups, regarding the alleged violation of their human rights. However, where it is provided with this mandate, the Paris Principles suggest that certain functions should be considered (see excerpt below). In essence, NHRIs are expected to handle complaints fairly, speedily and effectively through processes which are readily accessible to the public. NHRIs may be empowered to carry out investigations into complaints and refer their findings to an appropriate authority. NHRIs should have the authority to deal with bodies against which complaints are made and may be authorised to seek compliance with its decisions through the judiciary.

Excerpt from the Paris Principles

‘Additional principles concerning the status of commissions with quasi-judisdictional competence’

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

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

6. Procedural issues⁴

G.O. 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.

G.O. 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.

G.O. 6.3 NHRIs under review

⁴ Section 6 (6.1-6.6) of the General Observations was adopted by the International Coordinating Committee of National Human Rights Institutions for the Promotion and Protection of Human Rights (ICC) by email after the SCA meeting of March 2009. This section is currently undergoing revision by the ICC Working Group on General Observations.

Pursuant to Article 16 of the ICC Statute⁵, the ICC Chair or the Sub-Committee may initiate a review of a NHRI's accreditation status if it appears that the circumstances of that NHRI may have changed in any way which affects its compliance with the Paris Principles. Such a review is triggered by an exceptional set of circumstances considered to be temporary in nature. As a consequence, the regular re-accreditation process will be deferred until the review is completed.

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

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

G.O. 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.

G.O. 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.

⁵ Formerly article 3(g) of the ICC Rules of Procedure.

G.O. 6.6 More than one national institution in a State

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

In very exceptional circumstances, should more than one national institution seek accreditation by the ICC, it should be noted that Article 39 of the ICC Statute² provides that the State shall have one speaking right, one voting right and, if elected, only one ICC Bureau member.

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

- i. Written consent of the State Government (which itself must be a member of the United Nations).
- ii. Written agreement between all concerned national human rights institutions on the rights and duties as an ICC member including the exercise of the one voting and the one speaking right.

This agreement shall also include arrangements for participation in the international human rights system, including the Human Rights Council and the Treaty Bodies.

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

6. Procedural Issues

G.O. 6.7 Assessing the Performance of National Human Rights Institutions

The Sub-Committee assesses compliance with the Paris Principles in both law and practice. When assessing applications for accreditation, re-accreditation and special or other reviews it will consider: the NHRI's enabling legislation and any other relevant law, rules and regulations; relevant practices and procedures; organizational structure including staff complement and annual budget; annual and other reports; the concluding recommendations/observations of international human rights mechanisms, including the Universal Periodic Review, UN Treaty Bodies and Special Procedures; and credible third party reports, including reports from civil society.

JUSTIFICATION

The Paris Principles are the minimum international standards for the establishment of NHRIs. They provide a broad normative framework for the status, structure, mandate, composition, power and methods of operation of the State's principal domestic human rights mechanism.

As a core function, the ICC promotes the establishment and strengthening of NHRIs in conformity with the Paris Principles by using the Principles as criteria to determine ICC membership. Pursuant to Section 5 of the ICC Statute, the SCA has been delegated the task of assessing, and making recommendations to the ICC Bureau on a NHRI's compliance with the Paris Principles.

For reasons of administrative efficiency and cost effectiveness, the Sub-Committee primarily undertakes its assessment of NHRI applicants based on written submissions. The Sub-Committee has devised a list of documents required to obtain an informed picture of the establishment and effectiveness of a NHRI and therefore, to conduct an assessment of its compliance with the Paris Principles. These documents include:

- 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.
- a copy of the legislation or other instrument (relevant laws, rules and regulations) by which it is established and empowered in its official or published format;
- an outline of its organizational structure including staff complement;
- its annual budget; and
- a copy of its most recent annual report or equivalent document in its official or published format.

In addition, the ICC Secretariat (NIRMS – OHCHR) provides a summary of the application and all other relevant information (including third party reports), which is first sent to the applicant for verification, prior to its circulation to the SCA.

During the review session, the SCA may hear from members of the ICC Regional Coordinating Committees, and from OHCHR desk and field officers who may be able to provide country specific information, as needed.

In order to ensure all applicants are treated equally, and recognising that many NHRIs have neither the time nor resources to travel to Geneva, Switzerland, solely for an

accreditation review, applicants are not provided with an opportunity to appear in person before the Sub-Committee. However, applicants are provided with an opportunity to respond to questions from the Sub-Committee and to make an oral submission via a teleconference call with each applicant during their review session.

Geneva, May 2013

Annex IV

A NEW GENERAL OBSERVATION ON ASSESSING NATIONAL HUMAN RIGHTS INSTITUTIONS AS NATIONAL PREVENTIVE AND NATIONAL MONITORING MECHANISMS

2. Practices that directly promote Paris Principles compliance

G.O. 2.9 Assessing National Human Rights Institutions as National Preventive and National Monitoring Mechanisms

Where, pursuant to an international human rights instrument, a national human rights institution has been designated as, or as part of, a national preventive or monitoring mechanism, the Sub-Committee on Accreditation will assess whether the applicant has provided sufficient information to demonstrate that it is carrying out its functions in compliance with the Paris Principles.

Depending on the specific roles and functions ascribed to the NHRI, in undertaking this assessment, the Sub-Committee will consider, as appropriate:

- whether a formal legal mandate has been provided;
- whether the mandate has been appropriately defined to encompass the promotion and protection of all relevant rights contained in the international instrument;
- whether the staff of the NHRI possess the appropriate skills and expertise;
- whether the NHRI has been provided with additional and adequate resources;
- whether there is evidence that the NHRI is effectively undertaking all relevant roles and functions as may be provided in the relevant international instrument. Depending on the instrument and the mandate of the national human rights institution, such activities might include monitoring and investigation, the provision of constructive and/or critical advice to government and in particular, systematic follow up of its recommendations and findings on alleged human rights violations.⁶

The Sub-Committee may also consider, as it thinks appropriate, any guidance that has been developed by the relevant treaty body.⁷

⁶ With regard to National Preventive Mechanisms under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, see for example Articles 17 – 13 of Part III of that instrument and the rights protected in the parent Convention. With regard to National Monitoring Mechanisms under the Convention on the Rights of People with Disabilities, see for example principles and functions outlined in Articles 3, 4, 31, 32, 33 and 35, and the rights protected in Articles 3 – 30.

⁷ With regard to National Preventive Mechanisms under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, see for example the *Preliminary Guidelines for the Ongoing Development of National Preventive Mechanisms* developed by the Sub-Committee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and contained in paragraphs 24 – 29 of its First Annual Report (February 2007 – March 2008). (Ref: CAT/C/40/2).

JUSTIFICATION

In recent years, international human rights instruments have begun to incorporate a requirement that States Parties create, or designate an existing domestic agency (or agencies) with responsibility for monitoring and promoting the objectives of that instrument.

These international instruments often specify particular roles and functions to be carried out by the relevant domestic agency or agencies, which are variously referred to as national preventive or monitoring mechanisms.

In response, States have often chosen to designate their NHRI as, or as part of, its national preventive or monitoring mechanisms. In so doing, the State signals that the NHRI has a primary role to play in the promotion and protection of rights contained in those instruments.

In assessing whether an NHRI is carrying out these function in accordance with the Paris Principles, the SCA will consider a range of factors that impact on the capacity of a NHRI to function independently and effectively. With regard to the requirement for a specific legal mandate, this may depend on the scope of a NHRI existing mandate and the breadth of any additional roles and functions ascribed to it as a national preventive or monitoring mechanisms. Where additional powers are proposed, such as specific powers to enter, monitor, investigate and report on places of detention, and these go beyond the powers currently available to the NHRI, a more clearly defined legal mandate may be required in order to ensure the NHRI is able to undertake its role effectively and free from interference.

In undertaking its assessment, the Sub-Committee will also consider any guidelines developed by the relevant treaty body. It notes, however, that its role is to assess a NHRI against the Paris Principles, whereas the relevant treaty body undertakes its assessment of a national preventive or monitoring mechanism against the relevant international instrument upon which it is based. Guidelines developed by the relevant treaty body have, in general, been drafted for the broad range of agencies that may be designated as national preventive or monitoring mechanisms, and may not always be directly applicable to a national human rights institution.

Excerpt from the Paris Principles

(A) Competence and responsibilities.

...

3. A national institution shall, inter alia, have the following responsibilities:

(a) To submit to the Government, Parliament and any other competent body . . . opinions, recommendations, proposals and reports on . . . :

(ii) Any situation of violation of human rights which it decides to take up;

(b) To promote and ensure the harmonization of national legislation regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;

(c) To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;

(d) To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations and, where necessary, to express an opinion on the subject, with due respect for their independence;

(e) To cooperate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the promotion and protection of human rights;

...

**A NEW GENERAL OBSERVATION ON
THE QUASI-JUDICIAL COMPETENCY OF NATIONAL HUMAN RIGHTS
INSTITUTIONS (COMPLAINTS-HANDLING)**

2. Practices that directly promote Paris Principles compliance

G.O. 2.10 The quasi-judicial⁸ competency of National Human Rights Institutions (complaints-handling)

When a NHRI is provided with a mandate to receive, consider and/or resolve complaints alleging violations of human rights, it should be provided with the necessary functions and powers to adequately fulfil this mandate.

Depending on its mandate, such powers and functions might include:

- The ability to receive complaints against both public and private bodies in its jurisdiction;
- The ability to receive complaints that are filed by persons on behalf of the alleged victim(s), where consent is given;
- The ability to commence a complaint on its own initiative;
- The ability to investigate complaints, including the power to compel the production of evidence and witnesses, and to visit places of deprivation of liberty;
- The ability to protect complainants from retaliation for having filed a complaint;
- The ability to protect witnesses from retaliation for having provided evidence in relation to a complaint;
- The ability to seek an amicable and confidential settlement of the complaint through an alternative dispute resolution process;
- The ability to settle complaints through a binding determination;
- The ability to refer its findings to courts of law or specialized tribunals for adjudication;
- The ability to refer complaints falling beyond its jurisdiction or in a concurrent jurisdiction to the appropriate decision-making body;
- The ability to seek enforcement through the court system of its decisions on the resolution of complaints;
- The ability to follow up and monitor the implementation of its decisions on the resolution of complaints.
- The ability to refer its findings to government in situations where a complaint provides evidence of a widespread or systematic violation of human rights.

⁸The term 'quasi-jurisdictional competence' as cited in the Paris Principles has been recognized as a translation error. It is instead meant to be understood as 'quasi-judicial competence' and it refers to a NHRI's complaints-handling mandate and its related functions and powers.

In fulfilling its complaint handling mandate, the NHRI should ensure that complaints are dealt with fairly, transparently, efficiently, expeditiously, and with consistency. In order to do so, a NHRI should:

- Ensure that its facilities, staff, and its practices and procedures, facilitate access by those who allege their rights have been violated and their representatives;
- Ensure that its complaint handling procedures are contained in written guidelines, and that these are publicly available.

JUSTIFICATION

The Paris Principles do not require that NHRI have the ability to receive complaints or petitions from individuals or groups, regarding the alleged violation of their human rights. However, where it is provided with this mandate, the Paris Principles suggest that certain functions should be considered (see excerpt below). In essence, NHRIs are expected to handle complaints fairly, speedily and effectively through processes which are readily accessible to the public. NHRIs may be empowered to carry out investigations into complaints and refer their findings to an appropriate authority. NHRIs should have the authority to deal with bodies against which complaints are made and may be authorised to seek compliance with its decisions through the judiciary.

Excerpt from the Paris Principles

‘Additional principles concerning the status of commissions with quasi-judisdictional competence’

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

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

A NEW GENERAL OBSERVATION ON ASSESSING THE PERFORMANCE OF NATIONAL HUMAN RIGHTS INSTITUTIONS

6. Procedural Issues

G.O. 6.7 Assessing the Performance of National Human Rights Institutions

The Sub-Committee assesses compliance with the Paris Principles in both law and practice. When assessing applications for accreditation, re-accreditation and special or other reviews it will consider: the NHRI's enabling legislation and any other relevant law, rules and regulations; relevant practices and procedures; organizational structure including staff complement and annual budget; annual and other reports; the concluding recommendations/observations of international human rights mechanisms, including the Universal Periodic Review, UN Treaty Bodies and Special Procedures; and credible third party reports, including reports from civil society.

JUSTIFICATION

The Paris Principles are the minimum international standards for the establishment of NHRIs. They provide a broad normative framework for the status, structure, mandate, composition, power and methods of operation of the State's principal domestic human rights mechanism.

As a core function, the ICC promotes the establishment and strengthening of NHRIs in conformity with the Paris Principles by using the Principles as criteria to determine ICC membership. Pursuant to Section 5 of the ICC Statute, the SCA has been delegated the task of assessing, and making recommendations to the ICC Bureau on a NHRI's compliance with the Paris Principles.

For reasons of administrative efficiency and cost effectiveness, the Sub-Committee primarily undertakes its assessment of NHRI applicants based on written submissions. The Sub-Committee has devised a list of documents required to obtain an informed picture of the establishment and effectiveness of a NHRI and therefore, to conduct an assessment of its compliance with the Paris Principles. These documents include:

- 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.
- a copy of the legislation or other instrument (relevant laws, rules and regulations) by which it is established and empowered in its official or published format;
- an outline of its organizational structure including staff complement;
- its annual budget; and
- a copy of its most recent annual report or equivalent document in its official or published format.

In addition, the ICC Secretariat (NIRMS – OHCHR) provides a summary of the application and all other relevant information (including third party reports), which is first sent to the applicant for verification, prior to its circulation to the SCA.

During the review session, the SCA may hear from members of the ICC Regional Coordinating Committees, and from OHCHR desk and field officers who may be able to provide country specific information, as needed.

In order to ensure all applicants are treated equally, and recognising that many NHRIs have neither the time nor resources to travel to Geneva, Switzerland, solely for an accreditation review, applicants are not provided with an opportunity to appear in person before the Sub-Committee. However, applicants are provided with an opportunity to respond to questions from the Sub-Committee and to make an oral submission via a teleconference call with each applicant during their review session.

Annex V

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

General Observations of the Sub-Committee on Accreditation

Introduction

1. The 'Principles relating to the status of national institutions' (Paris Principles), endorsed by the World Conference on Human Rights and the UN General Assembly, are the minimum international standards for the establishment of National Human Rights Institutions (National Institutions). They provide a broad normative framework for the status, structure, mandate, composition, power and methods of operation of the principal domestic human rights mechanism.
2. National Institutions are established by States for the specific purpose of advancing and defending human rights at the national level, and are acknowledged to be one of the most important means by which States bridge the implementation gap between their international human rights obligations and actual enjoyment of human rights on the ground. The establishment and strengthening of National Institutions pursuant to the Paris Principles falls within the set of international human rights commitments made by States. It is therefore the responsibility of the State to ensure that it has in place a Paris Principle-compliant national institution.
3. As a core function, the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) promotes the establishment and strengthening of National Institutions in conformity with the Paris Principles and uses the Principles as criteria to determine ICC membership. The ICC Sub-Committee on Accreditation (SCA) has been delegated the task of assessing institutional compliance with the Paris Principles.
4. Since 2006, the SCA has used the knowledge gained through the ICC accreditation process to develop an important body of jurisprudence to give meaning to the content and scope of the Principles. Sections 6.2 and 6.3 of the SCA Rules of Procedure provide the Sub-Committee with authority to develop 'General Observations' on common and important interpretative issues on the implementation of the Paris Principles.
5. The SCA, with its depth of experience and extensive study of the guiding principles, is well placed to articulate its standards and deliver the necessary guidance to ensure a consistency of approach in its implementation and application. The SCA possesses an understanding of the issues faced by National Institutions, operating in a wide range of circumstances, including a

diversity of institutional models and political systems. As a result, it has developed clear examples of compliance with the Paris Principles in practice.

6. The General Observations are referred to in the SCA's recommendations issued to National Institutions upon review of their application for ICC accreditation, re-accreditation or special review. The General Observations, as interpretative tools of the Paris Principles, may be used to:
 - a) Instruct institutions when they are developing their own processes and mechanisms, to ensure Paris Principles compliance;
 - b) Persuade domestic governments to address or remedy issues relating to an institution's compliance with the standards articulated in the General Observations;
 - c) Guide the SCA in its determination of new accreditation applications, re-accreditation applications or other review:
 - i. If an institution falls substantially short of the standards articulated in the General Observations, it will be open for the SCA to find that it was not Paris Principle compliant.
 - ii. If the SCA has noted concern about an institution's compliance with any of the General Observations, it may consider what steps, if any, have been taken by an institution to address those concerns in future applications. If the SCA is not provided with proof of efforts to address the General Observations previously made, or offered a reasonable explanation why no efforts had been made, it would be open to the SCA to interpret such lack of progress as non-compliance with the Paris Principles.
7. The SCA is aware of the different National Institution structural models in existence, including: commissions; ombudsman institutes; hybrid institutions; consultative and advisory bodies; research institutes and centres; civil rights protectors; public defenders; and parliamentary advocates. (For a more complete discussion of the different model-types, the SCA refers to *Professional Training Series No.4: National Human Rights Institutions: History, Principles, Roles and Responsibilities*, United Nations Office of the High Commissioner for Human Rights, New York and Geneva, 2010, pp. 15-19). The SCA is of the view that its General Observations must be applied to every National Institution, regardless of its structural model type.
8. The citation of General Observations is done in tandem with the issuance of specific recommendations on individual accreditation applications, the latter of which are narrow in application and value to the National Institution concerned. Inversely, the General Observations, being independent of a specific set of facts pertaining to a single domestic context, are universal in their application and provide guidance in both individual cases and more generally.
9. The categorization of the General Observations into the following two sections clarifies for all stakeholders which of the General Observations are direct

interpretations of the Paris Principles, and which are drawn from the SCA's extensive experience in identifying proven practices to ensure independent and effective National Institutions in line with the Paris Principles:

- a. Essential requirements of the Paris Principles; and
 - b. Practices that ensure independent and effective National Institutions.
10. As it gains further experience, the SCA will seek to develop new General Observations. In 2011, the ICC adopted a formalized multi-stage process for doing so. This procedure was designed to promote their accessibility by ensuring consistency in their content and format; being clearly written, of reasonable length and readily understandable to a broad range of readers, primarily National Institutions and States.
 11. The first stage consists of a discussion amongst SCA members, representatives of the ICC Regional Coordinating Committees (RCCs), and OHCHR on the topic of the General Observation. Secondly, a Working Group is established. It canvasses ICC members, through the RCCs, for their views on the topic to be addressed. Thirdly, the Working Group, taking into account any comments received from the ICC membership, develops a draft and presents it to the SCA for review and comment. Lastly, once approved, the SCA will recommend the revised draft be formally adopted through its sessional reports to the ICC Bureau.
 12. The SCA's work in developing a comprehensive and detailed interpretation of the Paris Principles is of widespread value as it serves to enrich the understanding of the requirements to ensure the effective establishment, functioning and strengthening of National Institutions. Ultimately a synthesis of the most important issues of interpretation that have been uncovered by the individual accreditation applications, the General Observations are relevant to National Institutions globally, including those not currently the subject of the immediate accreditation review. The General Observations further enable stakeholders to take a proactive approach to effect the necessary changes to their own processes and mechanisms without requiring the SCA to provide them with specific recommendations resulting from the outcome of an accreditation review.
 13. National Institutions are reliant upon their national government to implement many of the provisions of the Principles, including their legislative establishment and provision of adequate funding. Where the SCA notes as an issue of concern, the failure of the State to fulfill its obligations pursuant to the Paris Principles, the National Institution may use the standards articulated in the General Observations to recommend the action required by the State to effect the necessary change to address or remedy issues before the accreditation status of the National Institution is next reviewed.
 14. The General Observations have also been developed to preserve the institutional memory of the SCA and to ensure a consistency in approach taken by its rotational membership.

15. The appropriate implementation of General Observations is key to advancing National Institution maturity. By clarifying the requirements of the Paris Principles, the General Observations provide National Institutions with accessible, relevant and readily contextualized norms to speed their evolution into more efficient and effective institutions, resulting in the enhanced promotion and protection of human rights on the ground.

**Adopted by the Bureau of the International Coordinating Committee of National Human Rights Institutions for the Promotion and Protection of Human Rights (ICC) at its Meeting held in Geneva, Switzerland, 6-7 May 2013.*

REVISION OF EXISTING GENERAL OBSERVATION ON THE ESTABLISHMENT OF NATIONAL HUMAN RIGHTS INSTITUTIONS

1. Essential requirements of the Paris Principles

G.O. 1.1 The establishment of National Human Rights Institutions

Existing text:

An NHRI must be established in a constitutional or legislative text. Creation by an instrument of the Executive is not adequate to ensure permanency and independence.

Suggested revision:

A National Human Rights Institution must be established in a constitutional or legislative text with sufficient detail to ensure the National Institution has a clear mandate and independence. In particular, it should specify the Institution's role, functions, powers, funding and lines of accountability, as well as the appointment mechanism for, and terms of office of, its members. The establishment of a National Institution by other means, such as an instrument of the Executive, does not provide sufficient protection to ensure permanency and independence

JUSTIFICATION

Pursuant to section A.2 of the Paris Principles: “A *national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.*”

The Sub-Committee recognizes that National Institutions are created in different socio-economic circumstances and political systems, which may in turn impact on the manner in which they are formally established. Nonetheless, the Paris Principles are clear on the requirement that National Institutions, regardless of the constitutional and legal system in which they operate, be formally entrenched in law and in this way be distinguished from an agency of state, a non-government organization, or an ad hoc body. Further, it is necessary that the constitutional or legislative text set out the National Institution's mandate as well as the composition of its leadership body. This necessarily requires the inclusion of complete provisions on the Institution's appointment mechanisms, terms and conditions of office, mandate, powers, funding and lines of accountability.

The Sub-Committee considers this provision to be of central importance in guaranteeing both the permanency and independence of the Institution.

The creation of a National Institution in other ways, such as by a decision of the Executive (through a decree, regulation, motion, or administrative action) and not by the legislature raises concerns regarding permanency, independence from government and the ability to exercise its mandate in an unfettered manner. This is because instruments of the Executive may be modified or cancelled at the whim of the Executive, and such decisions do not require legislative scrutiny. Changes to the mandate and functions of an independent agency of state charged with the promotion and protection of human rights should be scrutinised by the legislature and not be at the fiat of the Executive. Any amendment or repeal of the constitutional or legislative text establishing the National

Institution must require the consent of the legislature to ensure the Institution's guarantees of independence and powers do not risk being undermined in the future.

Excerpt from the Paris Principles

B) Competence and responsibilities –

2. *A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.*

REVISION OF EXISTING GENERAL OBSERVATION ON HUMAN RIGHTS MANDATE

1. Essential requirements of the Paris Principles

G.O. 1.2 Human rights mandate

Existing text:

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

Suggested revision:

All National Human Rights Institutions should be legislatively mandated with specific functions to both promote and protect human rights.

The Sub-Committee understands 'promotion' to include those functions which seek to create a society where human rights are more broadly understood and respected. Such functions may include education, training, advising, public outreach and advocacy. 'Protection' functions may be understood as those that address and seek to prevent actual human rights violations. Such functions include monitoring, inquiring, investigating and reporting on human rights violations, and may include individual complaint handling.

A National Institution's mandate should be interpreted in a broad, liberal and purposive manner to promote a progressive definition of human rights which includes all rights set out in international, regional and domestic instruments, including economic, social and cultural rights. Specifically, the mandate should:

- extend to the acts and omissions of both the public and private sectors;
- vest the National Institution with the competence to freely address public opinion, raise public awareness on human rights issues and carry out education and training programs;
- provide the authority to address recommendations to *public authorities*, to analyse the human rights situation in the country, and to obtain statements or documents in order to assess situations raising human rights issues;
- authorize unannounced and free access to inspect and examine any public premises, documents, equipment and assets without prior written notice;
- authorize the full investigation into all alleged human rights violations, including the military, police and security officers.

JUSTIFICATION

According to sections A.1 and A.2 of the Paris Principles, a National Institution should possess, "*as broad a mandate as possible*", which is to be, "*set forth in a constitutional or legislative text*", and should include both, "*the promot[ion] and protect[ion] of human rights*". Section A.3 of the Paris Principles enumerates specific responsibilities the National Institution must, at a minimum, be vested with. These requirements identify two

main issues which must necessarily be addressed in the establishment and operation of a National Institution:

- (iii) The mandate of the Institution must be established in national law. This is necessary to guarantee the independence and autonomy with which a National Institution undertakes its activities in the fulfilment of its public mandate;
- (iv) The National Institution's mandate to both promote and protect human rights must be defined as broadly as possible so as to give the public the protection of a wide range of international human rights standards: civil; political; economic; cultural; and social. This gives effect to the principle that all rights are universal, indivisible, and interdependent.

Excerpt from the Paris Principles

A. Competence and responsibilities –

- 4. *A national institution shall be vested with competence to promote and protect human rights*
- 5. *A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.*
- 6. *A national institution shall, inter alia, have the following responsibilities:*
 - (h) *To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicize them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:*
 - (v) *Any legislative or administrative provisions, as well as provisions relating to judicial organizations, intended to preserve and extend the protection of human rights; in that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights; it shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;*
 - (vi) *Any situation of violation of human rights which it decides to take up;*

- (vii) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;*
- (viii) Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government;*
- (i) To promote and ensure the harmonization of national legislation regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;*
- (j) To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;*
- (k) To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations and, where necessary, to express an opinion on the subject, with due respect for their independence;*
- (l) To cooperate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the promotion and protection of human rights;*
- (m) To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;*
- (n) To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.*

**REVISION OF EXISTING GENERAL OBSERVATION
ON ENCOURAGING RATIFICATION OR ACCESSION
TO INTERNATIONAL HUMAN RIGHTS INSTRUMENTS**

1. Essential requirements of the Paris Principles

G.O. 1.3 Encouraging ratification or accession to international human rights instruments

Existing text:

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.

Suggested revision:

Encouraging ratification of, or accession to international human rights instruments, and the effective implementation of international human rights instruments to which the state is a party, is a key function of a National Human Rights Institution. The Principles further prescribe that National Institutions should promote and encourage the harmonization of national legislation, regulations and practices with these instruments. The Sub-Committee considers it important that these duties form an integral part of the enabling legislation of a National Institution. In fulfilling this function, the National Institution is encouraged to undertake activities which may include the following:

- monitoring developments in international human rights law;
- promoting state participation in advocacy for and the drafting of international human rights instruments;
- conducting assessments of domestic compliance with and reporting on international human rights obligations, for example, through annual and special reports and participation in the Universal Periodic Review process.

National Institutions should, in encouraging their governments to ratify international human rights instruments, advocate that this be done without reservations.

JUSTIFICATION

Sections A.3(b) and (c) of the Paris Principles require that National Institutions have the responsibility to “*promote and ensure the harmonization of national legislation, regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation*”. Additionally, the National Institution has the responsibility “*to encourage ratification of [these] instruments or accession to those instruments, and to ensure their implementation*”.

In practice this requires National Institutions to review relevant national laws, regulations and policies to determine that they are compatible with the obligations arising from international human rights standards and propose the amendment or repeal of any legislation, regulations or policies that are inconsistent with the requirements of these standards. The Sub-Committee is of the view that the National Institution should be legislatively empowered to carry out these responsibilities.

The Sub-Committee notes the distinction between the state's own monitoring obligations as required by these instruments, and the distinct role played by the National Institution in monitoring the state's compliance and progress towards implementing the instruments it ratifies. Where the National Institution undertakes to carry out its own activities in promoting and protecting the rights contained therein, it shall do so in an entirely autonomous fashion. This does not preclude the National Institution from undertaking joint action with the state on certain activities, such as reviewing compliance of existing domestic legislation and regulations with international human rights instruments.

Excerpt from the Paris Principles

A) Competence and responsibilities –

4. *A national institution shall, inter alia, have the following responsibilities:*

....

(d) *To promote and ensure the harmonization of national legislation regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;*

(e) *To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;*

REVISION OF EXISTING GENERAL OBSERVATION ON INTERACTION WITH THE INTERNATIONAL HUMAN RIGHTS SYSTEM

1. Essential requirements of the Paris Principles

G.O. 1.4 Interaction with the International Human Rights System

Existing text:

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.

Suggested revision:

The Paris Principles recognise that monitoring and engaging with the international human rights system, in particular the Human Rights Council and its mechanisms (Special Procedures and Universal Periodic Review) and the United Nations Human Rights Treaty Bodies, can be an effective tool for National Human Rights Institutions in the promotion and protection of human rights domestically.

Depending on existing domestic priorities and resources, effective engagement with the international human rights system may include:

- submitting parallel or shadow reports to the Universal Periodic Review, Special Procedure mechanisms and Treaty Bodies Committees;
- making statements during debates before review bodies and the Human Rights Council;
- assisting, facilitating and participating in country visits by United Nations experts, including special procedures mandate holders, treaty bodies, fact finding missions and commissions of inquiry; and
- monitoring and promoting the implementation of relevant recommendations originating from the human rights system.

In considering their engagement with the international human rights system, National Institutions are encouraged to actively engage with the Office of the United Nations High Commissioner for Human Rights (OHCHR), the ICC, their Regional NHRI Coordinating Committee and other National Institutions, as well as international and national NGOs and civil society organizations.

JUSTIFICATION

Sections A.3(d) and A.3(e) of the Paris Principles give National Institutions the responsibility to interact with the international human rights system in three specific ways. That is, National Institutions are required:

4. To contribute to country reports submitted to United Nations bodies and committees, and to regional institutions, in line with the States' treaty obligations;
5. To express an opinion on the subject, where necessary, with due respect for their independence;
6. To cooperate with the United Nations and any other organization in its system, as well as with regional human rights institutions and the National Institutions of other countries.

The Sub-Committee is of the view that National Institution engagement with international bodies is an important dimension of their work. Through their participation, National Institutions connect the national human rights enforcement system with international and regional human rights bodies. Domestically, National Institutions play a key role in raising awareness of international developments in human rights through reporting on the proceedings and recommendations of treaty-monitoring bodies, special procedures mandate holders and the Universal Periodic Review. Their independent participation in human rights mechanisms through, for example, the production of parallel reports on the State's compliance with treaty obligations, also contributes to the work of international mechanisms in independently monitoring the extent to which states comply with their human rights obligations.

Moreover, National Institution participation in regional and international co-ordination bodies serves to reinforce their independence and effectiveness, overall. Through exchanges, National Institutions are provided with an opportunity to learn from shared experiences. This may lead to collectively strengthening each other's positions and contributing to resolving regional human rights issues.

National Institutions are encouraged to monitor the states' reporting obligations under the Universal Periodic Review and the international treaty bodies, including through dialogue with the relevant treaty body committees.

While it is appropriate for governments to consult with National Institutions in the preparation of a state's reports to human rights mechanisms, National Institutions should neither prepare the country report nor should they report on behalf of the government. National Institutions must maintain their independence and, where they have the capacity to provide information to human rights mechanisms, do so in their own right.

The Sub-Committee wishes to clarify that a National Institution's contribution to the reporting process through the submission of stakeholder or shadow reports under relevant international instruments should be done independently of the state, and may draw attention to problems, issues and challenges that may have been omitted or dealt with inadequately in the state report.

The Sub-Committee recognizes the primacy of a National Institution's domestic mandate, and that its capacity to engage with the international human rights system must depend on its assessment of domestic priorities and available resources. Within these limitations, National Institutions are encouraged to engage wherever possible and in accordance with their own strategic priorities. In so doing, the Sub-Committee highlights that National Institutions should:

- avail themselves of the assistance offered by the UN Office of the High Commissioner for Human Rights (OHCHR), which provides technical assistance and facilitates regional and global cooperation and exchanges among National Institutions; and

- engage with the ICC, their respective regional Sub-Committee representative and regional coordinating committees: African Network of NHRIs; Network of NHRIs of the Americas; Asia-Pacific Forum of NHRIs; and, European Group of NHRIs.

Excerpt from the Paris Principles

A) Competence and responsibilities –

3. A national institution shall, *inter alia*, have the following responsibilities:

-
- (d) *To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations and, where necessary, to express an opinion on the subject, with due respect for their independence;*
 - (e) *To cooperate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the promotion and protection of human rights;*

REVISION OF EXISTING GENERAL OBSERVATION ON COOPERATION WITH OTHER HUMAN RIGHTS BODIES

1. Essential requirements of the Paris Principles

G.O. 1.5 Cooperation with other human rights bodies

Existing text:

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.

Suggested revision:

Regular and constructive engagement with all relevant stakeholders is essential for NHRIs to effectively fulfil their mandates. NHRIs should develop, formalize and maintain working relationships, as appropriate, with other domestic institutions established for the promotion and protection of human rights, including sub-national statutory human rights institutions, thematic institutions, as well as civil society and non-governmental organizations.

JUSTIFICATION

In prescribing the National Institution's methods of operation, sections C(f) and C(g) of the Paris Principles require Institutions to: "*maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular ombudsmen, mediators and similar institutions)*".

The Principles specifically recognize "*the fundamental role played by the non-governmental organizations in expanding the work of the national institutions*", and therefore encourage NHRIs to, "*develop relations with the non-governmental organizations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas*".

To give full effect to these Paris Principle requirements, the Sub-Committee recommends that NHRIs should develop, formalize and maintain regular, constructive and systematic working relationships with other domestic institutions and actors established for the promotion and protection of human rights. Interaction may include the sharing of knowledge, such as research studies, best practices, training programmes, statistical information and data, and general information on its activities. For the following reasons the Sub-Committee considers such cooperation necessary to ensure the full realization of human rights nation-wide:

- *National human rights framework* – The effectiveness of a NHRI in implementing its mandate to protect and promote human rights is largely dependent upon the quality of its working relationships with other national democratic institutions such

as: government departments; judicial bodies; lawyers' organizations; non-governmental organizations; the media; and other civil society associations. Broad engagement with all stakeholders may provide a better understanding of: the breadth of human rights issues across the state; the impact of such issues based on social cultural, geographic and other factors; gaps, as well as potential overlap and duplication in the setting of policy, priorities and implementation strategies. NHRIs working in isolation may be limited in their ability to provide adequate human rights protections to the public.

- *Unique position of NHRIs* – The character and identity of a NHRI serves to distinguish it from both government bodies and civil society. As independent, pluralistic institutions, NHRIs can play an important role.
- *Improved accessibility* – The NHRI's relations with civil society and NGOs is particularly important in improving its accessibility to sections of the populations who are geographically, politically or socially remote. These organizations are likely to have closer relations with vulnerable groups as they often have a more extensive network than NHRIs and are almost always likely to be closer to the ground. In this way, NHRIs may utilize civil society to provide an outreach mechanism to engage with vulnerable groups.
- *Expertise of other human rights bodies* – As a result of their specialized mandates, other human rights bodies and civil society groups may provide a NHRI with valuable advice on the major human rights issues facing vulnerable groups across the nation. As such, NHRIs are encouraged to regularly consult with other human rights bodies and civil society at all stages of programme planning and implementation, as well as policy making, to ensure the NHRI's activities reflect public concerns and priorities. Developing effective relationships with the mass media, as a section of civil society, is a particularly important tool for human rights education.
- *Formalized relationships* – The importance of formalizing clear and workable relationships with other human rights bodies and civil society, such as through public memoranda of understanding, serves as a reflection of the importance of ensuring regular, constructive working relationships and is key to increasing the transparency of the NHRI's work with these bodies.

Excerpt from the Paris Principles

C) Methods of operation –

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

...

- (f) *Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular ombudsmen, mediators and similar institutions);*
- (g) *In view of the fundamental role played by the non-governmental organizations in expanding the work of the national institutions, develop relations with the non-governmental organizations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.*

REVISION OF EXISTING GENERAL OBSERVATION ON RECOMMENDATIONS BY NATIONAL HUMAN RIGHTS INSTITUTIONS

1. Essential requirements of the Paris Principles

G.O. 1.6 Recommendations by National Human Rights Institutions

Existing text:

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

Suggested revision:

Annual, special and thematic reports of National Human Rights Institutions serve to highlight key national human rights concerns and provide a means by which these bodies can make recommendations to, and monitor respect for, human rights by public authorities.

National Institutions, as part of their mandate to promote and protect human rights should undertake follow up action on recommendations contained in these reports and should publicize detailed information on the measures taken or not taken by public authorities in implementing specific recommendations or decisions.

In fulfilling its protection mandate, a National Institution must not only monitor, investigate and report on the human rights situation in the country, it should also undertake rigorous and systematic follow up activities to promote and advocate for the implementation on its recommendations and findings, and the protection of those whose rights were found to have been violated.

Public authorities are encouraged to respond to recommendations from National Institutions in a timely manner, and to provide detailed information on practical and systematic follow-up action, as appropriate, to the National Institution's recommendations.

JUSTIFICATION

The Paris Principles are not only explicit in their direction that National Institutions have the responsibility to make recommendations to public authorities on improving the national human rights situation, but also that National Institutions ensure their recommendations are widely publicized. Specifically, section A.3(a) of the Paris Principles requires National Institutions to “*submit to the Government, Parliament and any other competent body, [...] recommendations [...] on any matters concerning the promotion and protection of human rights*”, and enumerates the three areas that these recommendations shall relate to:

4. The creation or amendment of any legislative or administrative provisions, including bills and proposals;
5. Any situation of violation of human rights within a state;
6. Human rights in general and on more specific matters.

In prescribing its methods of operation, section C(c) of the Paris Principles requires National Institutions to, “[...] *publicize its opinions and recommendations*”, “[...] *directly or through any press organ [...]*”.

Finally, section D(d) of the Principles, requires National Institutions with quasi-judicial competence, that is, with the ability to hear and consider complaints, to: “*mak[e] recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations and administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.*”

The Sub-Committee is of the view that the three-fold reinforcement of the obligation to make and publicize recommendations is indicative that the drafters of the Paris Principles considered that NHRIs would be more effective when provided with the authority to monitor the extent to which public authorities follow their advice and recommendations. To give full effect to this principle, the Sub-Committee encourages governments to respond to advice and requests from National Institutions, and to indicate, within a reasonable time, how they have complied with their recommendations.

National Institutions should monitor the implementation of recommendations from annual and thematic reports, inquiries and other complaint handling processes.

Excerpt from the Paris Principles

A) Competence and responsibilities –

3. A national institution shall, inter alia, have the following responsibilities:

(a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicize them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:

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

- up;
- (ii) *Any situation of violation of human rights which it decides to take*
 - (iii) *The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;*
 - (iv) *Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government;*

C) Methods of operation –

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

...

- (c) *Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;*

...

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

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

...

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

**REVISION OF EXISTING GENERAL OBSERVATION
ON ENSURING PLURALISM OF THE
NATIONAL HUMAN RIGHTS INSTITUTION**

1. Essential requirements of the Paris Principles

G.O. 1.7 Ensuring pluralism of the National Human Rights Institution

Existing text:

Formerly G.O. 2.1

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.

Suggested revision:

A diverse decision-making and staff body facilitates the National Human Rights Institution's appreciation of, and capacity to engage on, all human rights issues affecting the society in which it operates, and promotes the accessibility of the National Institutions for all citizens.

Pluralism refers to broader representation of national society. Consideration must be given to ensuring pluralism in the context of gender, ethnicity or minority status. This includes, for example, ensuring the equitable participation of women in the National Institution.

The Sub-Committee notes there are diverse models for ensuring the requirement of pluralism in the composition of the National Institutions as set out in the Paris Principles. For example:

- a) Members of the decision-making body represent different segments of society as referred to in the Paris Principles. Criteria for membership of the decision-making body should be legislatively established, be made publicly available and subject to consultation

with all stakeholders, including civil society. Criteria that may unduly narrow and restrict the diversity and plurality of the composition of the National Institution's membership should be avoided;

b) Pluralism through the appointment procedures of the governing body of the National Institutions, 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 staff that are representative of the diverse segments of society. This is particularly relevant for single member Institutions, such as an Ombudsperson.

JUSTIFICATION

Ensuring the pluralistic composition of the National Institution is a prime requirement of the Paris Principles as a guarantee of institutional independence. Section B.1 states: "*The composition of the national institution and the appointment of its members [...] shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights.*" The same provision highlights that pluralism is intended to promote effective cooperation with an indicative list of stakeholders representing:

- (f) Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;*
- (g) Trends in philosophical or religious thought;*
- (h) Universities and qualified experts;*
- (i) Parliament;*
- (j) Government departments*

The Sub-Committee considers the pluralistic composition of the National Institution to be fundamentally linked to the requirement of independence, credibility, effectiveness and accessibility.

Where the members and staff of National Institutions are representative of a society's social, ethnic, religious and geographic diversity, the public are more likely to have confidence that the National Institution will understand and be more responsive to its specific needs. Additionally, the meaningful participation of women at all levels is important to ensure an understanding of, and access for, a significant proportion of the population. Likewise, in multilingual societies, the Institution's capacity to communicate in all languages is key to its accessibility.

The diversity of the membership and staff of a National Institution, when understood in this way, is an important element in ensuring the effectiveness of a National Institution and its real and perceived independence and accessibility.

Ensuring the integrity and quality of members is a key factor in the effectiveness of the Institution. For this reason, selection criteria that ensure the appointment of qualified and

independent decision-making members should be legislatively established and made publicly available prior to appointment.

The Sub-Committee recommends that the adoption of such criteria be subject to consultation with all stakeholders, including civil society, to ensure the criteria chosen is appropriate and does not exclude specific individuals or groups.

The Sub-Committee cautions that criteria that may be unduly narrow and restrict the diversity and plurality of the composition of the National Institution's membership and staff body, such as the requirement to belong to a specific profession, may limit the capacity of the National Institution to fulfil effectively all its mandated activities. If staff and members have a diverse range of professional backgrounds, this will help to ensure that issues are not narrowly framed.

Excerpt from the Paris Principles

B) Composition and guarantees of independence and pluralism –

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

- (f) Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;*
- (g) Trends in philosophical or religious thought;*
- (h) Universities and qualified experts;*
- (i) Parliament;*
- (j) Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).*

**REVISION OF EXISTING GENERAL OBSERVATION ON
SELECTION AND APPOINTMENT OF THE DECISION-MAKING BODY
OF NATIONAL HUMAN RIGHTS INSTITUTIONS**

1. Essential requirements of the Paris Principles

G.O. 1.8 Selection and appointment of the decision-making body of National Human Rights Institutions

Existing text:

Formerly G.O. 2.2

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.*

Suggested revision:

It is critically important to ensure the formalisation of a clear, transparent and participatory selection and appointment process of the National Human Rights Institution's decision-making body in relevant legislation, regulations or binding administrative guidelines, as appropriate. A process that promotes merit-based selection and ensures pluralism is necessary to ensure the independence of, and public confidence in, the senior leadership of a National Institution. Such a process should include requirements to:

- a) Publicize vacancies broadly;
- b) Maximize the number of potential candidates from a wide range of societal groups;
- c) Promote broad consultation and/or participation in the application, screening, selection and appointment process
- d) Assess applicants on the basis of pre-determined, objective and publicly available criteria;
- e) Select members to serve in their own individual capacity rather than on behalf of the organization they represent.

JUSTIFICATION

Section B.1 of the Paris Principles specifies that: *“The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights.”*

Section B.1 further enumerates which groups may be included in this process. These are: “representatives of:

- (f) Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;
- (g) Trends in philosophical or religious thought;
- (h) Universities and qualified experts;
- (i) Parliament;
- (j) Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).”

The Sub-Committee interprets the reference to an election or other like process, together with the reference to broad participation, as requiring a clear, transparent, merit based and participatory selection and appointment process.

Such a process is fundamental in ensuring the independence and effectiveness of, and public confidence in, the National Institution.

For this reason, it is important that the selection process be characterized by openness and transparency. That is, it should be under the control of an independent and credible body and involve open and fair consultation with NGOs and civil society. Not only is this a means of developing a good relationship with these bodies, but consideration of the expertise and experience of NGOs and civil society is likely to result in a National Institution with greater public legitimacy.

Advertising vacancies broadly maximises the potential number of candidates, thereby promoting pluralism.

Promoting broad consultation and participation in the application, screening, selection and appointment process promotes transparency, pluralism and public confidence in the process, the successful candidates and the National Institution.

The assessment of applicants on the basis of pre-determined, objective and publicly available criteria promotes the appointment of merit based candidates, limits the capacity for undue interference in the selection process and serves to ensure the appropriate management and effectiveness of the National Institution.

Selecting members to serve in their own individual capacity rather than on behalf of the organization they represent is likely to result in an independent and professional membership body.

It is recommended that the selection and appointment process, bearing the hallmarks described above, be formalized in relevant legislation, regulations or binding administrative guidelines, as appropriate.

Excerpt from the Paris Principles

B) Composition and guarantees of independence and pluralism –

1. The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance

with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:

- (a) Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;*
- (b) Trends in philosophical or religious thought;*
- (c) Universities and qualified experts;*
- (d) Parliament;*
- (e) Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).*

**REVISION OF EXISTING GENERAL OBSERVATION ON
GOVERNMENT REPRESENTATIVES ON NATIONAL HUMAN RIGHTS
INSTITUTIONS**

1. Essential requirements of the Paris Principles

G.O. 1.9 Government representatives on National Human Rights Institutions

Existing text:

Formerly G.O. 2.3

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.

Suggested revision:

The Sub-Committee notes that the Paris Principles require a National Human Rights Institution to be independent from government in its structure, composition and method of operation.

With regard to the composition of a National Institution, this requires that members of a ruling political party or coalition, and representatives of government agencies should not, in general, be represented on the governing body of the National Institution.

Should they do so, a National Institution's legislation should clearly indicate that such persons participate only in an advisory capacity. In order to further promote independence in decision making, and avoid conflicts of interest, a National Institution's rules of procedure should establish practices to ensure that such persons are unable to inappropriately influence decision-making by, for example, excluding them from attending parts of meetings where final deliberations and strategic decisions are made.

The participation of members of a ruling political party or coalition, or representatives of government agencies, should be restricted to those whose roles and functions are of direct relevance to the mandate and functions of the National Institution, and whose advice and cooperation may assist the National Institution in fulfilling its mandate. In addition, the number of such representatives should be limited and should not exceed the number of other members of the National Institution's governing body.

JUSTIFICATION

Paris Principle C(a) states that a National Institution must be able to “freely consider any question falling within its competence”.

Paris Principle B.2 states that the requirement of an appropriate infrastructure is intended to ensure the National Institution is “independent of the government”.

Paris Principle B.3 requires that members of a National Institution are appointed officially, thereby promoting a stable mandate “without which there can be no real independence”.

Paris Principles B.1 specifically provides that representatives of government departments can participate “only in an advisory capacity”.

By clearly promoting independence in the composition, structure and method of operation of a National Institution, these provisions seek to avoid any possible interference in the National Institution’s assessment of the human rights situation in the State and the subsequent determination of its strategic priorities. It follows therefore that members of parliament, and especially those who are members of the ruling political party or coalition, or representatives of government agencies, should not in general be represented on, nor should they participate in decision making, since they hold positions that may at times conflict with an independent National Institution.

The SCA acknowledges the value in developing and maintaining effective links with relevant ministers and government agencies, particularly where cooperation will assist in promoting the National Institution’s mandate. However, it stresses that this must be done in a way that ensures both real and perceived independence of decision making and operation, and avoids a conflict of interest. The creation of Advisory Committees is an example of a mechanism where such relationships can be maintained without impacting on the National Institution’s independence.

The SCA notes that Paris Principle B.1 specifically states that representatives of government agencies have only an advisory role, while no such restriction is explicitly stated in relation to representatives of parliament. It notes, however, that in providing an indicative list of relevant stakeholders, Paris Principle B.1 envisages either the “presence” or the ability to establish “effective cooperation” with such representatives. Given the explicit requirements for independence stated throughout the Paris Principles, examples of which are referenced above, the Sub-Committee is of the view that a similar restriction must apply to members of parliament, and particularly those who are members of the ruling political party or coalition.

Excerpt from the Paris Principles

B) Composition and guarantees of independence and pluralism –

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

*...
(d) Parliament*

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

2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of

this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.

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

(C) Methods of operation

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

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

**REVISION OF EXISTING GENERAL OBSERVATION ON ADEQUATE
FUNDING OF NATIONAL HUMAN RIGHTS INSTITUTIONS**

1. Essential requirements of the Paris Principles

G.O. 1.10 Adequate funding of National Human Rights Institutions

Existing text:

Formerly G.O. 2.6

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

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

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

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

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

Suggested revision:

To function effectively, a National Human Rights Institution must be provided with an appropriate level of funding in order to guarantee its independence and its ability to freely determine its priorities and activities. It must also have the power to allocate funding according to its priorities. In particular, adequate funding should, to a reasonable degree, ensure the gradual and progressive realisation of the improvement of the Institution's operations and the fulfilment of its mandate.

Provision of adequate funding by the State should, as a minimum, include the following:

- a) the allocation of funds for premises which are accessible to the wider community, including for persons with disabilities. In certain circumstances, in order to promote independence and accessibility, this may require that offices are not co-located with other government agencies. Where possible, accessibility should be further enhanced by establishing a permanent regional presence;
- b) salaries and benefits awarded to its staff comparable to those of civil servants performing similar tasks in other independent Institutions of the State;
- c) remuneration of members of its decision-making body (where appropriate);

d) the establishment of well-functioning communications systems including telephone and internet;

e) the allocation of a sufficient amount of resources for mandated activities. Where the National Institution has been designated with additional responsibilities by the State, additional financial resources should be provided to enable it to assume the responsibilities of discharging these functions.

Funding from external sources, such as from international development partners, should not compose the core funding of the National Institution, as this is the responsibility of the State. However, the Sub-Committee recognizes the need for the international community, in specific and rare circumstances, to continue to engage and support a National Institution in order to ensure it receives adequate funding until such time when the State will be able to do so. In such unique cases National Institutions should not be required to obtain approval from the state for external sources of funding, which may otherwise detract from its independence. Such funds should not be tied to donor-defined priorities but rather to the pre-determined priorities of the National Institution.

Government funding should be allocated to a separate budget line item applicable only to the National Institution. Such funding should be regularly released and in a manner that does not impact adversely on its functions, day-to-day management and retention of staff.

While a National Institution should have complete autonomy over the allocation of its budget, it is obliged to comply with the financial accountability requirements applicable to other independent agencies of the State.

JUSTIFICATION

Section B.2 of the Paris Principles addresses the requirement for National Institutions to be adequately funded as a guarantee of their independence. The purpose of such funding and a definition of what it entails is stated as follows: *“The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.”*

While the provision of “adequate funding” is determined in part by the national financial climate, States have the duty to protect the most vulnerable members of society, who are often the victims of human rights violations, even in times of severe resource constraints. As such, the Sub-Committee believes that it is nevertheless possible to identify certain aspects of this Paris Principles requirement that must be taken into account in any particular context. They include the following:

- f) *Accessibility to the public* – This is particularly important for the most vulnerable sections of society, who would otherwise have particular difficulty bringing attention to any violation of their human rights.
 - o As many vulnerable persons may be geographically remote from the major cities where most National Institutions are located, establishing a regional presence increases the accessibility of National Institutions, giving them as wide a geographical reach as possible, and enabling them

to have full national coverage for the receipt of complaints. It is essential that where regional offices exist, they be adequately resourced to ensure their effective functioning.

- Another means of increasing the accessibility of National Institutions to vulnerable groups is to ensure that their premises are neither located in wealthy areas nor in or nearby government buildings. This is particularly important where government buildings are protected by military or security forces. Where National Institution's offices are too close to government offices, this may not only compromise the perceived independence of the Institution but also risk deterring complainants.
- g) *National Institution staff* – Salaries and benefits awarded to National Institution staff should be comparable to those of civil servants performing similar tasks in other independent Institutions of the State.
- h) *National Institution members* – Where appropriate, members of the National Institution's decision-making body should receive remuneration equivalent to those individuals with similar responsibilities in other independent Institutions of the State.
- i) *Communications infrastructure* – The establishment of communications systems, including telephone and internet, is essential for the public to access the National Institutions' office. A well-functioning communications structure, including simplified complaints-handling procedures which may include the receipt of complaints orally in minority languages, increases the reach of vulnerable groups to the Institution's services.
- j) *Allocation for activities* – National Institutions should receive adequate public funding to perform their mandated activities. An insufficient budget can render an Institution ineffective or limit it from reaching its full effectiveness. Where the National Institution has been designated with additional responsibilities by the State, such as the role of National Preventive or Monitoring Mechanism pursuant to an international human rights instrument, additional financial resources should be provided to enable it to discharge these functions.

Donor funding

As it is the responsibility of the State to ensure the National Institution's core budget, the Sub-Committee takes the view that funding from external sources, such as from international development partners, should not constitute the Institution's core funding. However, it recognizes the need for the international community, in specific and rare circumstances, to continue to engage and support a National Institution in order to ensure it receives adequate funding until such time when the State will be able to do so. This is particularly applicable in post-conflict States. In these circumstances, National Institutions should not be required to obtain approval for external sources of funding, as this requirement may pose a threat to its independence.

Financial systems and accountability

Financial systems should be such that the National Institution has complete financial autonomy as a guarantee of its overall freedom to determine its priorities and activities. National law should indicate from where the budget of the National Institution is allocated, ensuring the appropriate timing of release of funding, in particular to ensure an appropriate level of skilled staff. This should be a separate budget line over which it has absolute management and control. The National Institution has the obligation to ensure the coordinated, transparent and accountable management of its funding through regular public financial reporting and a regular annual independent audit.

Excerpt from the Paris Principles

B) Composition and guarantees of independence and pluralism –

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

**REVISION OF EXISTING GENERAL OBSERVATION ON
ANNUAL REPORTS OF NATIONAL HUMAN RIGHTS INSTITUTIONS**

1. Essential requirements of the Paris Principles

G.O. 1.11 Annual reports of National Human Rights Institutions

Existing text:

Formerly G.O. 6.7

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

Suggested revision:

Annual, special and thematic reports serve to highlight key developments in the human rights situation in a country and provide a public account, and therefore public scrutiny, of the effectiveness of a National Human Rights Institution. The reports also provide a means by which a National Institution can make recommendations to, and monitor respect for, human rights by government.

The importance for a National Institution to prepare, publicize and widely distribute an annual report on its national situation with regard to human rights in general, and on more specific matters, is stressed. This report should include an account of the activities undertaken by the National Institution to further its mandate during that year and should state its opinions, recommendations and proposals to address any human rights issues of concern.

The SCA considers it important that the enabling laws of a National Institution establish a process whereby the Institution's reports are required to be widely circulated, discussed and considered by the legislature. It would be preferable if the National Institution has an explicit power to table reports directly in the legislature, rather than through the Executive, and in so doing to promote action on them.

Where a National Institution has made an application for accreditation or, re-accreditation, it will be required to submit a current annual report, that is, one from the preceding year's reporting period. Where the published report is not in one of the ICC languages, a certified translation of the key elements of the report must be submitted in its application for accreditation. The Sub-Committee finds it difficult to assess the effectiveness of a National Institution and its compliance with the Paris Principles in the absence of a current annual report.

JUSTIFICATION

Section A.3(a) of the Paris Principles requires National Institutions to be responsible for, “*submit[ting] to the Government, Parliament and any other competent body, [...] reports on any matters concerning the promotion and protection of human rights.*” It states that institutions “*may decide to publicize them*”, and enumerates the four areas that these reports shall relate to:

- (v) Recommendations on the creation or amendment of any legislative or administrative provisions, including bills and proposals;
- (vi) Any situation of violation of human rights;
- (vii) Human rights in general and on more specific matters; and
- (viii) Proposals to put an end to human rights violations, and its opinion on the proposals and reaction of government to these situations.

With a view to assisting National Institutions to fulfil their obligations pursuant to this provision of the Paris Principles, the Sub-committee provides the following guidance on its requirements, as based on international proven practices:

- *Purpose of reports* – Annual, special and thematic reports serve to highlight key developments in the human rights situation in a country and provide a public account, and therefore public scrutiny, of the effectiveness of a National Institution. The reports also provide a means by which a National Institution can make recommendations to, and monitor respect for, human rights by government;
- *Content of reports* – The annual report of a National Institution is a vital public document that not only provides a regular audit of the government’s performance on human rights but also an account of what the National Institution has done. As such, this report should include an account of the activities undertaken by the National Institution to further its mandate during that year and should state its opinions, recommendations and proposals to address any human rights issues of concern, and the government’s action on its recommendations;
- *Publication of reports* – It is important for a National Institution to publicize and widely distribute an annual report on its national situation with regard to human rights in general, and on more specific matters. It is vitally important that all the findings and recommendations of the Institution be publicly available as this increases the transparency and public accountability of the Institution. In publishing and widely disseminating its annual report, the National Institution will play an extremely important role in educating the public on the situation of human rights violations in the country;
- *Submission of reports* – The National Institution should be given the legislative authority to table its reports directly to the legislature, rather than through the Executive. The legislature should be required to discuss and consider the reports of the National Institution, so as to ensure that its recommendations are properly considered by relevant public authorities.

The Sub-Committee finds it difficult to review the accreditation status of a National Institution in the absence of a current annual report, that is, a report dated not earlier than one year before the time it is scheduled to undergo an accreditation review by the Sub-Committee.

Excerpt from the Paris Principles

A) Competence and responsibilities –

3. A national institution shall, *inter alia*, have the following responsibilities:

- b) *To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicize them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:*
- (v) *Any legislative or administrative provisions, as well as provisions relating to judicial organizations, intended to preserve and extend the protection of human rights; in that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights; it shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;*
 - (vi) *Any situation of violation of human rights which it decides to take up;*
 - (vii) *The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;*
 - (viii) *Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government;*

**REVISION OF EXISTING GENERAL OBSERVATION ON
GUARANTEE OF TENURE FOR MEMBERS OF THE
NATIONAL HUMAN RIGHTS INSTITUTION DECISION-MAKING BODY**

2. Practices that directly promote Paris Principles compliance

G.O. 2.1 Guarantee of tenure for members of the National Human Rights Institution decision-making body

Existing text:

Formerly G.O. 2.9

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.*

Suggested revision:

The SCA is of the view that in order to address the Paris Principles requirements for a stable mandate, without which there can be no independence, the enabling legislation of a National Human Rights Institution must contain an independent and objective dismissal process, similar to that accorded to members of other independent State agencies.

The dismissal must be made in strict conformity with all the substantive and procedural requirements as prescribed by law.

The grounds for dismissal must be clearly defined and appropriately confined to only those actions which impact adversely on the capacity of the member to fulfil their mandate.

Where appropriate, the legislation should specify that the application of a particular ground must be supported by a decision of an independent body with appropriate jurisdiction.

Dismissal should not be allowed based solely on the discretion of appointing authorities.

Such requirements ensure the security of tenure of the members of the governing body and are essential to ensure the independence of, and public confidence in, the senior leadership of a National Institution.

JUSTIFICATION

In prescribing the conditions to ensure a stable mandate for members of the National Institution decision-making body, section B.3 of the Paris Principles is silent on the scenario of their dismissal. Nonetheless, it is the view of the Sub-Committee that ensuring the security of tenure of National Institution members is consistent with the Paris Principles requirements regarding the composition of the National Institution and its guarantees of independence and pluralism.

Appropriate procedural protections and due process are essential aspects of all human rights but are especially pertinent in relation to a matter such as ensuring the independence of the National Institution and its membership. That is, National Institution members must be able to undertake their responsibilities without fear and without inappropriate interference from the State or other actors. In this light, the Sub-Committee highlights the following:

- Members may be dismissed only on serious grounds of misconduct or incompetence, in accordance with fair procedures ensuring objectivity and impartiality set out in the national law.
- The dismissal of members by the Executive, such as before the expiry of the term for which they have been appointed, without any specific reasons given to them and without effective functional immunity being available to contest the dismissal is incompatible with the independence of the National Institution.

Excerpt from the Paris Principles

B) Composition and guarantees of independence and pluralism –

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

**REVISION OF EXISTING GENERAL OBSERVATION ON
FULL-TIME MEMBERS OF A NATIONAL HUMAN RIGHTS INSTITUTION**

2. Practices that directly promote Paris Principles compliance

G.O. 2.2 Full-time members of a National Human Rights Institution

Existing text:

Formerly G.O. 2.8

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

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

Suggested revision:

The enabling law of the National Human Rights Institution should provide that members of its decision-making body include full-time remunerated members. This would assist in ensuring:

- a) the independence of the NHRI free from actual or perceived conflict of interests;
- b) a stable tenure for the members;
- c) regular and appropriate direction for staff; and,
- d) the ongoing and effective fulfilment of the NHRI's functions.

An appropriate minimum term of appointment is crucial in promoting the independence of the membership of the NHRI, and to ensure the continuity of its programs and services. An appointment period of three years is considered to be the minimum that would be sufficient to achieve these aims. As a proven practice, the Sub-Committee encourages that a term of between three and seven years with the option to renew once be provided for in the NHRI's enabling law.

A further requirement in ensuring the stability of a member's mandate (and the independence of a NHRI and its members) is the requirement that the terms and conditions of a member's service cannot be modified to their detriment during their period of appointment. Additionally, such terms and conditions should be equivalent to those with similar responsibilities in other independent State agencies.

JUSTIFICATION

Section B.3 of the Paris Principles sets out the requirements to ensure a stable mandate for the members of the National Institution. It specifies that, "*their appointment shall be*

effected by an official act which shall establish the specific duration of the mandate.” It further clarifies that, “this mandate may be renewable [...]”.

Although the provision is silent on the duration of the appointment, the Sub-Committee is of the view that specifying an appropriate minimum term in the National Institution’s enabling law is crucial in both promoting the independence of the membership and of the National Institution, and to ensure the continuity of its programs and services. Consistent with international good practices, it therefore recommends an appointment period that extends between three and seven years with the option to renew once.

In prescribing the conditions to ensure a stable mandate for members of the National Institution’s decision-making body, section B.3 of the Paris Principles does not address the issue of whether members are required to be full-time or whether they are to be remunerated. The Sub-Committee is of the view that the appointment of members on a full-time basis promotes stability, an appropriate degree of management and direction, and limits the risk of members being exposed to conflicts of interest upon taking office. Furthermore, it clearly establishes the terms and conditions of service, including proper remuneration of members, and serves to reinforce their independence and integrity.

Excerpt from the Paris Principles

B) Composition and guarantees of independence and pluralism –

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

**REVISION OF EXISTING GENERAL OBSERVATION
ON GUARANTEE OF FUNCTIONAL IMMUNITY**

2. Practices that directly promote Paris Principles compliance

G.O. 2.3 Guarantee of functional immunity

Existing text:

Formerly G.O. 2.5

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.

Suggested revision:

It is strongly recommended that provisions be included in national law to protect legal liability of members of the National Human Rights Institution's decision-making body for the actions and decisions that are undertaken in good faith in their official capacity.

Such functional immunity reinforces the independence of a National Institution, promotes the security of tenure of its decision-making body, and its ability to engage in critical analysis and commentary on human rights issues.

It is acknowledged that no office holder should be beyond the reach of the law and thus, in certain exceptional circumstances it may be necessary to lift immunity. However, the decision to do so should not be exercised by an individual, but rather by an appropriately constituted body such as the superior court or by a special majority of parliament. It is recommended that national law provides for well-defined circumstances in which the functional immunity of the decision-making body may be lifted in accordance with fair and transparent procedures.

JUSTIFICATION

The Paris Principles do not specifically refer to the term "functional immunity". It is now widely accepted that the entrenchment of this provision in law is necessary for the reason that this protection, being one that is similar to that which is granted to judges under most legal systems, is an essential hallmark of institutional independence.

Providing members of the National Institution's decision-making body with functional immunity, that is, specifically for actions and decisions undertaken in good faith in their official capacity, protects them from individual legal proceedings from anyone who objects to a decision of the National Institution.

It is understood that functional immunity is not absolute and should not cover circumstances where National Institution members abuse their official function or act in bad faith. In well-defined circumstances, the democratically-elected authority, such as the legislature, to which the National Institution is accountable, should have the power to lift immunity in accordance with a fair and transparent process.

Excerpt from the Paris Principles

B) Composition and guarantees of independence and pluralism –

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

C) Methods of operation –

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

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

...

**REVISION OF EXISTING GENERAL OBSERVATION
ON RECRUITMENT AND RETENTION OF
NATIONAL HUMAN RIGHTS INSTITUTION STAFF**

2. Practices that directly promote Paris Principles compliance

G.O. 2.4 Recruitment and retention of National Human Rights Institution staff

Existing text:

Formerly G.O. 2.7

As a principle, NHRIs should be empowered to appoint their own staff.

Suggested revision:

National Human Rights Institutions should be legislatively empowered to determine the staffing structure, the skills required to fulfil the Institution's mandate, set other appropriate criteria (such as diversity), and select their staff in accordance with national law.

Staff should be recruited according to an open, transparent and merit based selection process that ensures pluralism and a staff composition that possesses the skills required to fulfil the Institution's mandate. Such a process promotes the independence and effectiveness of, and public confidence in the National Institution.

National Institution staff should not be seconded or re-deployed from branches of the public service.

JUSTIFICATION

Pursuant to section B.2 of the Paris Principles, a National Institution is required to be provided with adequate funding, the purpose of which is "*to enable it to have its own staff [...] in order to be independent of the Government*". The Sub-committee interprets this provision to mean that:

- (iii) National Institutions should possess the legislative authority to hire their own staff according to written recruitment guidelines based on merit and conducted through a transparent selection process using published criteria.
- (iv) National Institutions should be resourced in such a manner as to permit the employment and retention of staff with the requisite qualifications and experience to fulfil the Institution's mandate. Additionally, such resources should allow for salary levels, terms and conditions of employment applicable to the staff of the National Institution to be equivalent to those of similarly independent State agencies and members of the public service undertaking similar work and with similar qualifications and responsibilities.

In this way, the Sub-Committee recognises that fulfilling the requirements of Paris Principle B.2 is fundamental to ensuring the independence and efficient functioning of a National Institution. Where the National Institution lacks either adequate resources or the legislative ability to recruit its own staff, particularly at the senior-level, and these are

instead appointed by the Executive, this undermines the principle of institutional independence.

Excerpt from the Paris Principles

B) Composition and guarantees of independence and pluralism –

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

**REVISION OF EXISTING GENERAL OBSERVATION ON
STAFFING OF THE NATIONAL HUMAN RIGHTS INSTITUTION
BY SECONDMENT**

2. Practices that directly promote Paris Principles compliance

G.O. 2.5 Staffing of the National Human Rights Institution by secondment

Existing text:

Formerly G.O. 2.4

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.*

Suggested revision:

A fundamental requirement of the Paris Principles is that a National Human Rights Institution is, and is perceived to be, able to operate independent of government interference. Where a National Institution's staff members are seconded from the public service, and in particular where this includes those at the highest level in the National Institution, it brings into question the capacity of the National Institution to function independently.

A National Institution must have the authority to determine its staffing profile and to recruit its own staff.

In accordance with the relevant Paris Principle, the Sub-Committee is of the view that:

- a) Senior level posts should not be filled with secondees;
- b) The number of secondees should not exceed 25% except in exceptional or relevant circumstances.

JUSTIFICATION

Pursuant to section B.2 of the Paris Principles, a National Institution is required to be provided with adequate funding, the purpose of which is "*to enable it to have its own staff [...] in order to be independent of the Government*".

Restrictions on the capacity of a National Institution to hire its own staff, or requirements to hire or accept seconded personnel from government agencies, except in exceptional or relevant circumstances, impacts on the real and perceived independence of an Institution and may impede its ability to conduct its own affairs in an autonomous manner, free from government interference. This situation is particularly compounded where senior staff members, who set the direction and foster the culture of the National Institution, are seconded.

The Sub-Committee highlights that this requirement should not be seen to limit the capacity of a National Institution to hire a public servant with the requisite skills and experience, and indeed acknowledges that there may be certain positions within a National Institution where such skills are particularly relevant. However, the recruitment process for such positions should always be open to all, clear, transparent, merit-based and at the sole discretion of the National Institution.

Excerpt from the Paris Principles

B) Composition and guarantees of independence and pluralism –

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

**REVISION OF EXISTING GENERAL OBSERVATION ON
NATIONAL HUMAN RIGHTS INSTITUTIONS DURING THE SITUATION
OF A COUP D'ÉTAT OR A STATE OF EMERGENCY**

2. Practices that directly promote Paris Principles compliance

G.O. 2.6 National Human Rights Institutions during the situation of a coup d'état or a state of emergency

Existing text:

Formerly G.O. 5.1

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.

Suggested revision:

In the situation of a coup d'état or a state of emergency, it is expected that a National Human Rights Institution will conduct itself with a heightened level of vigilance and independence, and in strict accordance with its mandate.

National Institutions are expected to promote and ensure respect for human rights, democratic principles and the strengthening of the rule of law in all circumstances and without exception. In situations of conflict or a state of emergency, this may include monitoring, documenting, issuing public statements and releasing regular and detailed reports through the media in a timely manner to address urgent human rights violations.

JUSTIFICATION

The Paris Principles do not explicitly give guidance on the expected conduct of a National Institution when its country is experiencing a state of emergency or coup d'état. However, Paris Principle A.1 clearly specifies that National Institutions shall have the responsibility to promote and protect human rights. Furthermore, Paris Principle A.3 specifies the powers and responsibilities of a National Institution including:

- reporting on human rights violations (Paris Principle A.3(a)(ii) –(iii));
- monitoring and reporting on government action or inaction (Paris Principle A.3(a)(iv)) ; and
- publicizing its views on any matters concerning the promotion and protection of human rights (Paris Principle A.3(a)). This responsibility is further elaborated in Paris Principle C(c), which provides the capacity to address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations.

While the impact of emergency circumstances varies from one case to another, the Sub-Committee is aware that they almost always have a dramatic impact on the rights recognized in international human rights standards, particularly on vulnerable groups.

Disruptions to peace and security in no way nullify or diminish the relevant obligations of the National Institution. As in other comparable situations, those obligations assume greater practical importance in times of particular hardship. In such circumstances, the protection of human rights becomes all the more important, and National Institutions must ensure that individuals have accessible and effective remedies to address human rights violations.

National Institutions, as independent and impartial bodies, play a particularly important role by investigating allegations of violations promptly, thoroughly and effectively. As such, National Institutions will be expected to promote and ensure respect for human rights, democratic principles and strengthening the rule of law in all circumstances without exception. This may include issuing public statements and releasing regular and detailed reports through the media in a timely manner to address urgent human rights violations.

In order to fulfil its obligations, it is necessary that the National Institution continue to conduct itself with a heightened level of vigilance and independence in the exercise of its mandate. The Sub-Committee will scrutinize the extent to which the National Institution concerned has taken steps to the maximum of its available resources to provide the greatest possible protection for the human rights of each individual within its jurisdiction.

Excerpt from the Paris Principles

A. Competence and responsibilities –

1. A national institution shall be vested with competence to promote and protect human rights.

3. A national institution shall, inter alia, have the following responsibilities:

(a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicize them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:

...

(ii) Any situation of violation of human rights which it decides to take up;

(iii) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;

(iv) Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government;

...

C. Methods of operation –

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

...

(c) Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;

**REVISION OF EXISTING GENERAL OBSERVATION ON THE
LIMITATION OF POWER OF NATIONAL HUMAN RIGHTS INSTITUTIONS
DUE TO NATIONAL SECURITY**

2. Practices that directly promote Paris Principles compliance

G.O. 2.7 Limitation of power of National Human Rights Institutions due to national security

Existing text:

Formerly G.O. 5.2

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.

Suggested revision:

The scope of the mandate of a National Human Rights Institution may be restricted for national security reasons. While this limitation is not inherently contrary to the Paris Principles, it should not be unreasonably or arbitrarily applied and should only be exercised under due process.

JUSTIFICATION

According to section A.2 of the Paris Principles, a National Institution should possess, “as broad a mandate as possible”. To give full effect to this Principle, the Sub-Committee recommends that this provision be understood in the widest sense. That is, the mandate of the National Institution should extend to protect the public from acts and omissions of public authorities, including officers and personnel of the military, police and special security forces. Where such public authorities, who may potentially have a great impact on human rights, are excluded from the jurisdiction of the National Institution, this may serve to undermine the credibility of the Institution.

National Institutions, in their analysis of the human rights situation in the country, should be authorized to fully investigate all alleged human rights violations, regardless of which State officials are responsible. This should include the ability to have unannounced and unimpeded access to inspect and examine any public premises, documents, equipment and assets without prior written notice. Although the authority of National Institutions to undertake such an investigation may be restricted for national security reasons, such restriction should not be unreasonably or arbitrarily applied and should be exercised under due process.

Excerpt from the Paris Principles

A) Competence and responsibilities –

3. *A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.*

**REVISION OF EXISTING GENERAL OBSERVATION ON
THE ADMINISTRATIVE REGULATION OF
NATIONAL HUMAN RIGHTS INSTITUTIONS**

2. Practices that directly promote Paris Principles compliance

G.O. 2.8 Administrative regulation of National Human Rights Institutions

Existing text:

The classification of a NHRI as a public body has important implications for the regulation of its accountability, funding, and reporting arrangements. In cases where the administration and expenditure of public funds by a NHRI is regulated by the Government, such regulation must not compromise the NHRI's ability to perform its role independently and effectively. For this reason, it is important that the relationship between the Government and the NHRI be clearly defined.

Suggested revision

The classification of a National Human Rights Institution as an independent State agency has important implications for the regulation of certain practices, including reporting, recruitment, funding and accounting.

Where a State has developed uniform rules or regulations to ensure State agencies are properly accountable for their use of public funds, the application of such rules or regulations on a National Institution is not considered inappropriate provided they do not compromise the National Institution's ability to perform its role independently and effectively.

The administrative requirements imposed on a National Institution must be clearly defined and should be no more onerous than those applicable to other independent of State agencies.

JUSTIFICATION

Section B.2 of the Paris Principles considers the “adequate funding” of a National Institution as a necessary guarantee of its independence. The purpose of this funding is: “in order to be independent of the Government and not to be subject to financial control which might affect its independence.” Such a provision is not, however, intended to limit the application of laws that require an appropriate level of financial accountability by public agencies.

To ensure respect for the principle of independence in circumstances where certain aspects of the administration of a National Institution is regulated by the Government, the Sub-Committee cautions that such regulation must not compromise the National Institution's ability to perform its role independently and effectively.

It may therefore be appropriate for the State to impose general regulatory requirements to promote:

- fair, transparent and merit based selection processes;
- financial propriety in the use of public funds;

- operational accountability.

Such regulation should not, however, extend to requiring a National Institution to seek government approval prior to carrying out its legislatively mandated activities, since this may compromise its independence and autonomy. Such practice is inconsistent with the exercise of the protection and promotion function that a National Institution is established to carry out in an independent and unfettered manner. For this reason, it is important that the relationship between the Government and the National Institution be clearly defined so as to avoid any undue Government interference.

Excerpt from the Paris Principles

B) Composition and guarantees of independence and pluralism –

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