

**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, 19 - 23 November 2012**

## SUMMARY OF RECOMMENDATIONS

### 2. Accreditation (Art. 10 of the ICC Statute)

#### **2.1 Bermuda: The Ombudsman of the Republic of Bermuda (OBO)**

**Recommendation:** The SCA recommends that consideration of the application of the OBO be **referred** to the ICC Bureau for guidance.

#### **2.2 Burundi: Independent National Human Rights Commission of Burundi (INHRCB)**

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

#### **2.3 Chile: Instituto Nacional de Derechos Humanos (INDH)**

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

#### **2.4 Ethiopia: Ethiopia Human Rights Commission (EHRC)**

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

### 3. Re-Accreditation (Art. 15 of the ICC Statute)

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

**Recommendation:** The SCA recommends that consideration of the application of the HRDA be deferred to the first session of 2013.

#### **3.2 Bosnia and Herzegovina: Institution of Human Rights Ombudsmen of Bosnia and Herzegovina (IHROBH)**

**Recommendation:** The SCA recommends that consideration of the application of the IHROBH be deferred to the first session of 2013.

#### **3.3 Denmark: Danish Institute for Human Rights (DIHR)**

**Recommendation:** The SCA recommends that DIHR be re-accredited **A**

#### **3.4 Egypt: National Council for Human Rights (NCHR)**

**Recommendation:** The SCA recommends that consideration of the application of the NCHR be **deferred** to its first session of 2013.

#### **3.5 Georgia: Office of the Public Defender (OPD)**

**Recommendation:** The SCA recommends that consideration of the application of the OPD be deferred to the first session of 2013.

**3.6 Malawi: Malawi Human Rights Commission (MHRC)**

**Recommendation:** The SCA recommends that consideration of the application of the MHRC be deferred to the first session of 2013.

**3.7 Norway: Norwegian Centre for Human Rights (NCHR)**

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

**3.8 Panama: Defensoría del Pueblo (DPP)**

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

**3.9 Poland: Human Rights Defender (HRD)**

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

**3.10 Portugal: Provedor de Justiça (Provedor)**

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

**3.11 Sénégal: Comité Sénégalais des Droits de l'Homme (CSDH)**

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

**3.12 Spain: Defensoría del Pueblo (DPS)**

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

**3.13 South Africa: South African Human Rights Commission (SAHRC)**

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

**3.14 Togo: National Human Rights Commission (CNDH)**

**Recommendation:** The SCA recommends that consideration of the application of the NHRC be deferred to the first session of 2013.

**4. Review (Article 16.2 of the ICC Statute)**

**4.1 Nepal: National Human Rights Commission (NHRC)**

**Recommendation:** The SCA decided to undertake a **Special Review** of the accreditation status of the NHRC at its first session of 2013.

## Report and Recommendations of the Session of the SCA on 19 – 23 November

### 1. BACKGROUND

- 1.1. In accordance with the Statute (attached as Annex I) of the International Coordinating Committee of National Institutions for the Protection and Promotion of Human Rights (ICC), the 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 (attached as 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, France for Europe, Mauritania for Africa, and Qatar for Asia-Pacific (Chair).
- 1.3. The SCA convened from 19-23 November 2012. 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 a representative from the Secretariat of the Asia Pacific Forum of NHRIs.
- 1.4. Pursuant to article 10 of the Statute, the SCA considered applications for accreditation from the NHRIs of Bermuda, Burundi, Chile and Ethiopia.
- 1.5. Pursuant to article 15 of the Statute, the SCA also considered applications for re-accreditation from the NHRIs of Armenia, Bosnia and Herzegovina, Denmark, Egypt, Georgia, Malawi, Norway, Panama, Poland, Portugal, Senegal, Spain, South Africa and Togo.

The SCA at the request of the NHRIs of France and Morocco deferred consideration of applications for reaccreditation to its first session in 2013.
- 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; and
  - C: Non-compliance with the Paris Principles.
- 1.8. The General Observations (attached as 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; or
  - 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 developed General Observations on NHRIs serving as National Monitoring/Preventive Mechanisms; the quasi-judicial competency of NHRIs; and assessing the performance of NHRIs. These will be brought to the ICC Bureau for consideration in May 2013

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

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

**1.12.** 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.

**1.13.** Pursuant to Article 18 of the Statute, in cases where the SCA considers a recommendation that would serve to remove the accredited status from an applicant institution, the applicant institution is informed of this intention and given the opportunity to provide in writing, within one year of such notice, the documentary evidence deemed necessary to establish its continued conformity with the Paris Principles. The concerned institution retains its “A” status during this period.

**1.14.** At ICC24 the Statute was amended to make explicit provision for the suspension of an A status NHRI in exceptional circumstances.

**1.15.** The SCA continued to consult with concerned NHRIs, where necessary, during its session. Prior to the session, all concerned NHRIs were requested to provide a name and phone number in case the SCA needed to contact the Institution. In addition, OHCHR desk officers and, as appropriate, OHCHR field officers were available to provide further information, as needed.

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

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

**1.18.** 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 Bermuda: Office of the Bermuda Ombudsman (OBO)**

**Recommendation:** The SCA recommends that the ICC Bureau consider the eligibility of national human rights institutions established by a non-member state of the United Nations to apply for ICC accreditation.

At its March 2012 session, the SCA deferred consideration of the application of the OBO to its current session, to allow the SCA to obtain additional information on the status of Bermuda as a British Overseas Territory and the ramifications of this status for its accreditation. The SCA noted that it might then refer the matter to the ICC Bureau for advice and direction as appropriate.

The SCA is of the view that the OBO, as a British Overseas Territory, is not currently eligible to seek accreditation by the ICC. The SCA notes that Article 10 of the ICC statute clearly refers to applications for accreditation from 'national' human rights institutions. Advice provided to, and accepted by the ICC Bureau in 2006 indicated that a 'national' institution is an institution established by a nation state of the United Nations. Additionally, Article 39 of the ICC statute specifies that only one NHRI per Member State of the United Nations shall be eligible to be a voting member. As Bermuda is not a Member State, nor does it have 'special status' with the United Nations, the SCA is of the view that it does not have a mandate to consider an application for accreditation from the OBO.

The SCA therefore recommends that the ICC Bureau consider this issue and make a policy determination as to whether, and in what circumstances, a human rights institution established by a non-member state of the United Nations ought to be eligible for membership of, and accreditation by the ICC.

A separate briefing paper will be provided to the ICC Bureau to assist in its deliberations on this issue.

The SCA expresses its appreciation to the OBO for its cooperation and assistance in providing documentation and explanations on the issues raised by the SCA.

## **2.2 Burundi: Independent National Human Rights Commission of Burundi (INHRCB)**

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

The SCA welcomes the establishment of the INHRCB in 2011 with enabling legislation that provides a broad mandate and strong guarantees of pluralism and independence. It also notes with appreciation the significant and effective work performed by the INHRCB during its first years of existence.

The SCA notes:

### **1. Pluralism of staff:**

The SCA notes that there is a low representation of women in the staff of the INHRCB, and that the Batwa minority group is not represented.

The SCA highlights the importance of ensuring that its staff is 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 INHRCB is encouraged to develop policies and procedures to ensure that staff representation is broad and pluralistic.

The SCA refers to General Observation 2.1 on “Ensuring Pluralism”, particularly subsection d).

## **2. Funding:**

The INHRCB reports that it does not receive adequate State funding to ensure ongoing and effective fulfillment of its mandate.

The SCA emphasizes the importance of the State providing adequate core funding. In particular, adequate funding should, to a reasonable degree, ensure a gradual and progressive improvement in the organization’s operations and the fulfilment of its mandate. This promotes the independence of the NHRI by allowing it to freely determine its priorities and allocate its resources accordingly. The SCA encourages the INHRCB to advocate for an increase in the funding provided by government..

The SCA refers to Paris Principle B.2 and to its General Observation 2.6 on `Adequate funding`.

## **3. Mandate in practice**

The SCA notes with appreciation the activities undertaken by the INHRCB particularly its recommendations and reports to the government. The SCA encourages the INHRCB to continue to monitor and advocate for the implementation of its recommendations and decisions in a practical, systemic and timely manner.

### **2.3 Chile: Instituto Nacional de Derechos Humanos (INDH)**

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

The SCA welcomes the establishment of the INDH in 2010 with enabling legislation that provides a broad mandate and strong guarantees of pluralism and independence. It also notes with appreciation the significant and effective work performed by the INDH during its first two years of existence.

The SCA notes:

### **1. Immunity**

There is no provision in the law granting immunity to the members for legal liability for actions taken in their official capacity.

The SCA is of the view that the independence of the NHRI and its members is promoted, and the potential for external interference is reduced, by including a clear provision in the enabling legislation of an NHRI to protect the members of the governing body from legal liability for actions undertaken in their official capacity.

The SCA encourages the INDH to advocate for provisions to protect its members of the governing body from legal liability for actions undertaken in their official capacity.

The SCA refers to its General Observation 2.5 on 'Immunity'.

## **2. Funding:**

The SCA notes that the INDH has requested funding to open regional offices in the northern and southern parts of the country in 2013. It encourages the INDH to continue its advocacy in this regard.

The SCA emphasizes the importance of the State providing adequate core funding. In particular, adequate funding should, to a reasonable degree, ensure a gradual and progressive improvement in the organization's operations and the fulfilment of its mandate. This promotes the independence of the NHRI by allowing it to freely determine its priorities and allocate its resources accordingly. The SCA encourages the INDH to advocate for an increase in the funding provided by government.

The SCA refers to Paris Principle B.2 and to its General Observation 2.6 on 'Adequate funding'.

### **2.4 Ethiopia: Ethiopia Human Rights Commission (EHRC)**

**Recommendation:** The SCA recommends that consideration of the application by the EHRC be deferred until its second session in 2013 in order to obtain more information on fundamental aspects of the EHRC legislation and its practice.

## **1. Effectiveness**

The SCA notes that various public reports by United Nations Treaty Bodies and other organisations have raised concerns about the independence and effectiveness of the EHRC. Notably, the Human Rights Committee (July 2011) refers to the EHRC undertaking "very few investigations into alleged human rights violations", and to its failure to make "any recommendations on existing and new laws" that impact on the enjoyment of human rights. The Committee against Torture also made recommendations to enhance the mandate of the EHRC to ensure "an effective independent national system to monitor and inspect all places of deprivation of liberty".

During its interview with the EHRC, the SCA sought additional information, in particular seeking advice on whether the EHRC had provided advice to government on recent contentious legislation. The EHRC indicated that it had not provided the government with advice on either:

- The Charities and Societies Proclamation law notwithstanding that it has been in operation for several years and has been identified by both national and international human rights organisations as having a serious impact on the rights to freedom of expression and association; or
- The Anti-Terrorism legislation, notwithstanding that it too has been in operation for several years and has been identified by national and international human rights organisations, and United Nations human rights experts, as having had a serious impact on freedom of speech and other rights.

While the EHRC indicated that it intended to undertake studies into each of these laws, the SCA highlights the importance of NHRI's responding within a reasonable time to alleged human rights concerns, noting that the delay in so doing impacts adversely on the perceived independence of, and public's confidence in, the EHRC.

The SCA refers the EHRC to Paris Principles 3 (a).

## **2. Staffing**

The SCA notes the high turnover of staff at the EHRC, and that this impacts on the capacity of the institution and the implementation of its strategic objectives. The SCA notes the EHRC's advice that this arises due to the disparity in the salaries paid in the private and public sector. The SCA encourages the EHRC to advocate for additional funding to ensure adequate terms and conditions of service for its staff, and refers to General Observation on Adequate funding 2.6.

## **3. Monitoring Detention Centres**

The EHRC has a general mandate to ensure human rights are respected, (section 6), but it does not have an explicit mandate to monitor places of detention. While the SCA notes that the EHRC can interpret its general mandate broadly, the lack of a specific legal power to access and monitor places of detention has the potential to limit the EHRC's capacity to undertake this important function.

The SCA encourages the EHRC to advocate for changes to its legislation to make clear its power to make unannounced visits to all public and private places of detention and confinement. Such a provision would in part address the recommendation of the Committee against Torture (CAT) (CAT/C/ETH/CO/1) that indicated the State party should strengthen the role and mandate of the Ethiopian Human Rights Commission (EHRC) to undertake regular and unannounced visits to places of deprivation of liberty and to issue independent findings and recommendations on such visits.

The SCA encourages the EHRC to seek an amendment of legislation to permit the EHRC to make unannounced visits to all public and private places of detention and confinement.

## **4. Accessibility**

The SCA notes that the EHRC does not appear to have services for interpretation for those who are blind or deaf, nor are its premises accessible for persons with physical disabilities.

The SCA highlights the importance of ensuring that national human rights institutions are accessible to all, and in particular, people with disabilities. It encourages the EHRC to take steps to address these issues.

## **5. Gaps Assessment – Recommendations**

The SCA notes that a Capacity Gaps Assessment was conducted in 2011. The SCA encourages the EHRC to work with the OHCHR and UNDP to implement the

recommendations of that report, in order to ensure its compliance with the Paris Principles.

### **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 review of the HRDA be **deferred** to its first session in 2013.

The SCA takes note of the recent observation of the Human Rights Committee, made during the review of the Republic of Armenia:

“The Committee is concerned about information questioning the vigilance of the national human rights institution in monitoring, promoting and protecting human rights in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles) (art. 2).” (CCPR/C/ARM/CO2, 31 August 2012, para. 5.)

In the absence of a complete Annual Report for 2011 or 2012 in one of the four working languages of the ICC (e.g. English), the SCA had difficulty in assessing the concerns of the Human Rights Committee. The SCA gives the HRDA the opportunity to submit documentary evidence in response to the foregoing observation. The SCA will consider the response at its first session in 2013, and encourages the HRDA to speak with the ICC Secretariat regarding the type of information required.

#### **3.2 Bosnia and Herzegovina: Institution of Human Rights Ombudsmen of Bosnia and Herzegovina (IHROBH)**

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

The SCA notes:

##### **1. Composition and selection**

At its last accreditation review, the SCA commented on the need for a more participatory and transparent selection process, noting at the time that:

- The requirement that candidates for all three positions be graduated lawyers who have passed the bar exam and have had a distinguished career of at least 10 years in the legal profession may unduly restrict the potential candidates for these three important positions; and
- The direct reference in Article 3(7) to the appointment of ombudsmen from the ‘ranks of the three constituent peoples’ that is, Bosniaks, Croats and Serbs, does not appear to support a broad interpretation of pluralism beyond ethnicity.

At the time, the IHROBH indicated that it would be pursuing legislative amendments to address these concerns, and on that basis, the SCA requested the IHROBH to provide the SCA with information on this initiative when it next came up for review.

In its current application the IHROBH advises that due to a Parliamentary deadlock, it has not been possible to pursue changes to legislation in the intervening period. However, it also stated that the recent resolution of the impasse means that amendments may now be pursued.

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.

It encourages the IHROBH 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 to its General Observations 2.1 on 'Ensuring Pluralism' and 2.2 on 'Selection and appointment of the governing body'.

## **2. Funding**

At its last review the SCA expressed concern about the process for allocation and the adequacy of funds. During that review the IHROBH stated its intention to propose legislative amendments to address this issue.

In its current application the IHROBH advised that due to a Parliamentary deadlock, it has not been possible to pursue changes to legislation in the intervening period. However, it also stated that the recent resolution of the impasse means that amendments may now be pursued.

The SCA refers to Paris Principle B.2 and to its General Observation 2.6 on 'Adequate funding', which emphasizes the importance of the State providing adequate core funding. In particular, adequate funding should, to a reasonable degree, ensure a gradual and progressive improvement in the organization's operations and the fulfillment of its mandate. This promotes the independence of the NHRI by allowing it to freely determine its priorities and allocate its resources accordingly. The SCA encourages the IHROBH to advocate for an increase in the funding provided by government.

Funds should be allocated to a separate budget line item. Once the funds have been allocated by Parliament, the funds should be released to the NHRI and it should exercise absolute management and control. Where accountability requirements are imposed by government, such regulation must not compromise the capacity of the NHRI to function independently and effectively.

The SCA also refers to Paris Principle B.2 and to its General Observation 2.10 on 'Administrative regulation'.

The SCA will consider the application again at its next meeting and request the IHROBH to provide further information on the actions it has taken to advance these two issues. It encourages the IHROBH to seek assistance and advice from the European Coordinating Committee of NHRIs and the OHCHR.

### **3.3 Denmark: Danish institute for Human Rights (DIHR)**

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

The SCA welcomes the adoption by the Danish Parliament of a new law on the NHRI – **Danish Institute for Human Rights – Denmark's National Human Rights Institution Act**" which will come into force on January 1, 2013.

However, the SCA notes:

#### **1. Selection and appointment**

The enabling law does not specify the eligibility criteria to become a member of the Board. In addition, the law does not require that vacancies be advertised.

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 DIHR 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 to its General Observation 2.2 on 'Selection and appointment of the governing body'.

#### **2. Funding**

The DIHR advised that the Office of the Auditor General has indicated that there is an opportunity to apply another type of appropriation of funding, which could provide DIHR with even greater independence. The SCA encourages the DIHR to pursue this possible new budget appropriation.

### **3. Immunity**

There is no provision in the new Act granting immunity to the members for legal liability for actions taken in their official capacity.

The SCA is of the view that the independence of the NHRI and its members is promoted, and the potential for external interference is reduced, by including a clear provision in the enabling legislation of an NHRI to protect the members of the governing body from legal liability for actions undertaken in their official capacity.

The SCA encourages the DIHR to advocate for provisions to protect its members of the governing body from legal liability for actions undertaken in their official capacity.

The SCA refers to its General Observation 2.5 on 'Immunity'.

### **4. Conflicts of Interest**

The new law does not have any provision to address a situation of actual or perceived conflict of interest of members. The SCA encourages the DIHR to advocate for changes to the law to include such a provision.

### **5. Dismissal of members**

Article 3(2) of the new Act indicates that the employee representative on the Board shall be protected against dismissal and other deterioration of working conditions in the same way as union representatives within concerned or similar areas.

The new Act, however, is silent on the grounds or procedures for dismissal of Board members, and therefore it appears that there is no basis to remove a Board member for cause.

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 DIHR to its General Observation 2.9 on 'Guarantee of tenure for Members of governing body'.

### **6. Administrative regulation**

Article 4(3) of the new Act requires that the by-laws of the DIHR must be approved by the Minister for Foreign Affairs.

The DIHR advised that this provision is a formality and an ordinary requirement under Danish law, and does not compromise the DIHR's ability to perform its role independently and effectively.

The SCA refers to its General Observation 2.10 on 'Administrative regulation'.

## **7. Encouraging ratification or accession to international human rights instruments**

The new Act does not provide the DIHR with a specific mandate to encourage ratification and implementation of international human rights standards.

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

### **3.4 Egypt: National Council for Human Rights (NCHR)**

**Recommendation:** The SCA recommends that consideration of the re-accreditation of the NCHR be **deferred** to its first session in 2013.

At its October 2011 session, the SCA recommended deferral for one year so that the NCHR's re-accreditation could be undertaken following the enactment of proposed amendments to the enabling law.

On 14 June 2012, the Supreme Constitutional Court determined that certain provisions of the People's Assembly Law were unconstitutional. This resulted in the dissolution of the People's Assembly and it has not therefore been possible to pursue amendments to the founding law.

The SCA encourages the NCHR to continue to advocate for the enactment of the amendments that are compliant with the international standards contained in the Paris Principles and elaborated in the ICC General Observations, noting in particular the requirements in Paris Principles B.1 – B.3, which require independence from government.

The SCA again refers the NCHR to issues raised in its report of October 2011. These specifically addressed concerns about the selection and appointment process, the duration of appointment of members, security of tenure, appropriately defining the grounds and process for dismissal of members, access to places of detention and confinement and a broader mandate to promote and protect human rights.

The SCA also highlights the following comments on the proposed amendments that were before it:

- Proposed Article 2 states that the NHCR shall not comprise more than 5 members of political parties whether members of the People's Assembly or the Shura Council. The criteria for the selection of candidates should focus on applicants having appropriate skills, qualification and experience in the promotion and protection of human rights. Membership of a political party is not, in itself, a relevant criteria for the selection of members to the governing body on an NHRI. In addition, in order to ensure both the actual and perceived independence of the NCHR, which is a fundamental requirement in the Paris Principles, neither

- members of parliament, nor members of political parties, should be appointed as members of the governing board nor should they have the right to vote. Finally, in determining the overall composition of the NHCR, the appointment process should also highlight that the Parliamentary Committee of Human Rights, ensure fair gender representation in each of the proposed categories; and
- The NHRC may refer alleged human violations committed by public officials to the relevant public authority. The reference of such matters to the relevant public authorities should not preclude the capacity of the NHRC to conduct its own independent inquiry.

The SCA encourages the NCHR to continue its activities in a manner which reflects the independence, in law as well as in practice, required under the Paris Principles and despite the challenging context in the country, especially as to the investigation of human rights violations.

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

### **3.5 Georgia: Office of the Public Defender (OPD)**

**Recommendation:** The SCA recommends that consideration of the application of the OPD be **deferred** to its first session of 2013.

The SCA notes the imminent appointment of a new Public Defender.

The SCA commends the amendments to the OPD law since 2009, which provide a broader mandate to promote and protect human rights.

The SCA notes:

#### **1. Selection and appointment**

Article 6(2) of the enabling law indicates that candidates for the position of Defender can be nominated by the President, by parliamentary factions, or by a group of at least 6 parliamentarians who do not belong to any faction. The positions are not advertised broadly, nor are diverse societal forces consulted in this process.

The SCA emphasizes the requirement for a clear, transparent and participatory selection process that promotes merit based selection and 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 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 to its General Observation 2.2 on 'Selection and appointment of the governing body'.

## **2. Adequate funding**

The SCA commends the increased funding provided to the OPD and emphasizes the importance of the State to continue to provide adequate core funding, including for its functions as NPM. In particular, adequate funding should, to a reasonable degree, ensure a gradual and progressive improvement in the organization's operations and the fulfilment of its mandate. This promotes the independence of the NHRI by allowing it to freely determine its priorities and allocate its resources accordingly.

The SCA refers to Paris Principle B.2 and to its General Observation 2.6 on 'Adequate funding'.

## **3. Encouraging ratification or accession to international human rights instruments**

The enabling law of the OPD does not provide it with a specific mandate to encourage ratification and implementation of international human rights standards.

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

### **3.6 Malawi: Malawi Human Rights Commission (MHRC)**

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

The SCA notes that a new cohort of Commissioners was sworn in on 8 August 2012.

The SCA notes, as it did at the last session:

### **1. Immunity**

There is no provision in the new Act granting immunity to the members for legal liability for actions taken in their official capacity.

The SCA is of the view that the independence of the NHRI and its members is promoted, and the potential for external interference is reduced, by including a clear provision in the enabling legislation of an NHRI to protect the members of the governing body from legal liability for actions undertaken in their official capacity.

The SCA encourages the MHRC to continue to advocate for provisions to protect members of the governing body from legal liability for actions undertaken in their official capacity.

The SCA again refers to its General Observation 2.5 on ‘Immunity’.

## **2. Selection and appointment**

The SCA commends the consultative, open and transparent process that was used in the selection of the new commissioners. However, the process described by the MHRC is not reflected in the enabling legislation or officially documented.

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 MHRC to continue 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 to its General Observation 2.2 on ‘Selection and appointment of the governing body’.

## **3. Dismissal of members**

Article 131(3) states that a member may be removed from office for lack of “impartiality”. The SCA appreciates that the MHRC has indicated that there is a significant and progressive body of jurisprudence that provides clarity as to what constitutes appropriate grounds of dismissal, including on the basis of impartiality. Nonetheless, the SCA remains concerned that, without further clarification in the enabling law, this provision has the potential for misuse and therefore to compromise the independence and security of tenure of a member of the MHRC.

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 encourages the MHRC to advocate for amendment to its law to include such a process and refers the MHRC to its General Observation 2.9 on 'Guarantee of tenure for Members of governing body'.

#### **4. Adequate funding**

The MHRC reports that funding continues to be a challenge, but that this situation is not unique in Malawi.

The SCA emphasizes the importance of the State providing adequate core funding that is sufficient to allow for core programming in protection and promotion of human rights and to sustain the required staff compliment. In particular, adequate funding should, to a reasonable degree, ensure a gradual and progressive improvement in the organizations operations and fulfilment of its mandate. This promotes the independence of the NHRI by allowing it to freely determine its priorities and allocate its resources accordingly. It encourages the MHRC to advocate for an increase in the funding provided by government

The SCA refers to Paris Principle B.2 and to its General Observation 2.6 on 'Adequate funding'.

#### **5. Government representatives on NHRIs**

At its previous session, the SCA expressed concern that the role of Law Commissioner and Ombudsman as the selection committee and the exercise of voting rights by these individuals may compromise the independence, or perceived independence, of the MHRC as they are ex-officio members of the MHRC.

The MHRC reports that the Law Commissioner and Ombudsman are, like the MHRC Commissioners, independent statutory office holders and that their involvement has not compromised the objectivity and transparency of its operations. However, the SCA emphasizes that the Paris Principles require that the institution function independently, and both the Ombudsman and the Law Commissioner have statutory functions that must take precedence over the functions of the MHRC. Should the Law Commissioner and the Ombudsman remain members of the governing board, they should do so in an advisory capacity only.

The SCA refers to its General Observation 2.3 on 'Government representatives on national institutions'.

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

#### **3.7 Norway: Norwegian Centre for Human Rights (NCHR)**

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

At the SCA's session in October 2011, it gave the NCHR the opportunity to provide, in writing, within one year of such notice, the documentary evidence deemed necessary to establish its continued conformity with the Paris Principles.

The Norwegian Government has established an inter-ministerial working group to consider whether changes should be made to the NHRI, including whether a new NHRI should be established on the basis of a different institutional model, with reference to the Paris Principles.

The SCA notes with appreciation the efforts of the NCHR throughout the restructuring process and encourages the NCHR to continue to advocate for the establishment of a NHRI in full compliance with the Paris Principles. However, the NCHR in its present form is not operating fully in compliance with the Paris Principles.

### **3.8 Panama: Defensoría del Pueblo (DPP)**

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

The SCA notes:

#### **1. Selection and appointment**

Article 7 of the enabling legislation provides that the Defensor(a) is appointed by the legislature, on the basis of a nomination by its Human Rights Commission and a majority vote of a plenary session of the National Assembly.

The selection and appointment process of the Defensor(a) as set out in the 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 DPP 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:

- 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 to its General Observation 2.2 on 'Selection and appointment of the governing body'.

## **2. Dismissal of Defensor(a)**

Article 11 of the enabling legislation provides that the Defensor(a) can be suspended or removed for reasons of physical or psychological incapacity, by a vote of 2/3 of the members of the National Assembly. The existence of such grounds should be determined by an appropriately qualified medical practitioner.

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 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 to its General Observation 2.9 on 'Guarantee of tenure for members of governing bodies'.

## **3. Pluralism of staff**

In single member institutions such as Ombuds and Defensor(a), 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 DPP is encouraged to develop policies and procedures to ensure that staff representation is broad and pluralistic.

The SCA refers to General Observation 2.1 on "Ensuring Pluralism", particularly subsection (d).

## **4. Interaction with the International Human Rights System**

The SCA notes that the DPP has had limited engagement with the international human rights system and though it provided an oral report to the UPR, did not submit a more detailed written report.

The SCA emphasizes the importance of NHRI engagement with the international human rights system, in particular the Human Rights Council and its mechanisms (Special Procedures and the UPR), and the Treaty Bodies, in a manner that reflects the principle of independence. This may include, depending on the NHRIs assessment of priorities, submitting independent reports and providing input into these processes and following up at the national level to the recommendations originating from the international human rights system. In addition, the SCA encourages the DPP to actively engage with the ICC, the its Regional Coordinating Committee of NHRIs, as well as international and national NGOs and civil society organizations.

The SCA refers to Paris Principle A.3 and its General Observation 1.4 on "Interaction with the International Human Rights System".

The SCA encourages the DPP to seek advice and assistance from the America's Network of NHRIs and the OHCHR regional office in Panama.

### **3.9 Poland: Human Rights Defender (HRD)**

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

The SCA notes:

#### **1. Mandate**

The Constitution and the founding law do not explicitly mandate the HRD with responsibility to promote human rights. The SCA acknowledges and commends the HRD for the human rights promotional activities it carries out and encourages it to continue interpreting its mandate in a broad fashion.

The SCA encourages the HRD to advocate for amendments to the law to expressly provide for a broad mandate to both promote and protect all human rights.

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

#### **2. Immunity**

Although article 211 of the Constitution indicates that the Commissioner shall not be subject to penal liability, the officers and staff of HRD do not enjoy legal immunity for actions undertaken in their official capacity.

The SCA is of the view that the independence of the NHRI and its members is promoted, and the potential for external interference is reduced, by including a clear provision in the enabling legislation of an NHRI to protect relevant staff from legal liability for actions undertaken in their official capacity.

The SCA encourages the HRD to continue to advocate for additional provisions to protect the officers and staff members of the HRD from legal liability for actions undertaken in their official capacity.

The SCA refers to its General Observation 2.5 on 'Immunity'.

#### **3. Composition, selection and appointment**

The enabling law of the HRD specifies that the procedure of nomination for the office of the HRD will be determined by a resolution of the Sejm. The law does not specify that positions are to be widely advertised, or that the selection process will involve a broad consultation with civil society.

Moreover, the enabling law does not require a pluralistic composition, including representation of ethnic or minority groups, women, and persons with disabilities. The HRD reports that it does not currently have representatives of ethnic, religious or other minorities in its NPM section.

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 HRD 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 to its General Observations 2.1 on 'Ensuring pluralism' and 2.2 on 'Selection and appointment of the governing body'.

#### **4. Encouraging ratification or accession to international human rights instruments**

The enabling law of the HRD does not provide it with a specific mandate to encourage ratification and implementation of international human rights standards.

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

#### **5. Cooperation with the international human rights system**

The HRD is not mandated to cooperate with the international human rights system.

The SCA emphasizes the importance of NHRI's engagement with the international human rights system, in particular the Human Rights Council and its mechanisms (Special Procedures and the UPR), and the Treaty Bodies. This may include, depending on the NHRIs assessment of priorities, submitting independent reports and providing input into these processes and following up at the national level to the recommendations originating from the international human rights system. In addition, the SCA encourages the HRD to actively engage with the ICC, as well as the European Coordinating Committee of NHRIs, as well as international and national NGOs and civil society organizations.

The SCA refers to Paris Principle A.3 and to its General Observation 1.4 on 'Interaction with the International Human Rights System'.

#### **6. Adequate funding**

The HRD reports that it does not have adequate resources to effectively fulfil its role as NPM, and that it has an insufficient number of employees fulfilling this role.

The SCA emphasizes the importance of the State providing adequate core funding that is sufficient to allow for it to effectively fulfil its role as NPM. In particular, adequate funding should, to a reasonable degree, ensure a gradual and progressive improvement in the organizations operations and fulfilment of its mandate. This promotes the independence of the NHRI by allowing it to freely determine its priorities and allocate its resources accordingly. It encourages the HRD to advocate for an improvement in the level of funding it receives.

The SCA refers to Paris Principle B.2 and to its General Observation 2.6 on 'Adequate funding'.

The SCA encourages the HRD to seek assistance and advice from the European Coordinating Committee of NHRIs and from the OHCHR.

### **3.10 Portugal: Provedor de Justiça (Provedor)**

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

The SCA commends the Provedor's efforts to advocate for changes to its legislation.

The SCA notes:

#### **1. Mandate**

The enabling law does not give the Provedor jurisdiction over the activities of private enterprises. The Provedor indicates that it has recommended to Parliament that the law be amended to include private entities that provide services of general interest, including former public companies that have been privatized.

The SCA encourages the Provedor to continue to advocate for amendments to the Law to provide a broad mandate to promote and protect human rights.

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

#### **2. Composition, selection and appointment**

In accordance with the enabling law, the Ombudsman is appointed by the Parliament. The enabling law does not specify that positions are to be advertised broadly, or that the process should include broad consultation with diverse societal forces. Moreover, the enabling law is silent on the objective selection criteria used to assess prospective candidates.

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

The SCA encourages the Provedor 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 to its General Observations 2.1 on ‘Ensuring pluralism’ and 2.2 on ‘Selection and appointment of the governing body’.

### **3. Interaction with the international human rights system**

The SCA notes that the Provedor is engaged with the Council of Europe. However, the Provedor has had limited engagement with the international human rights system.

The SCA emphasizes the importance of NHRI engagement with the international human rights system, in particular the Human Rights Council and its mechanisms (Special Procedures and the UPR), and the Treaty Bodies, in a manner that reflects the principle of independence. This may include, depending on the NHRIs assessment of priorities, submitting independent reports and providing input into these processes and following up at the national level to the recommendations originating from the international human rights system. In addition, the SCA encourages the Provedor to actively engage with the ICC, the relevant Regional Coordinating Committee of NHRIs, as well as international and national NGOs and civil society organizations.

The SCA refers to Paris Principle A.3 and its General Observation 1.4 on “Interaction with the International Human Rights System”.

The SCA encourages the Provedor to seek advice and assistance from the European Coordinating Committee of NHRIs and the OHCHR regional office in Brussels.

#### **3.11 Sénégal: Comité Sénégalais des Droits de l’Homme (CSDH)**

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

At its first session in 2011, the SCA recommended that the review of the CSDH be **deferred** to its second session in 2011, but noted its intention to recommend the CSDH be accredited with **B status** if a range of concerns were not appropriately addressed. Notwithstanding this advance notification, the CSDH did not provide the SCA with a response to these concerns for consideration at its second session in 2011.

At its second session in 2011, the SCA informed the CSDH of its intention to recommend to the ICC Bureau that it be accredited with **B status**. Pursuant to Article 18 of the ICC Statute, the CSDH had 1 year to provide written evidence that establishes its renewed conformity with the Paris Principles. The CSDH retained its **A status** during this period.

Notwithstanding the 1-year notice, the CSDH did not provide the SCA with any documentation for consideration at this session.

The concerns expressed by the SCA at previous sessions were as follows:

### **1. Funding**

The SCA expressed concern for the lack of concrete support from the State in providing adequate funding to the CSDH. The SCA referred to Paris Principles B.2 and to General Observation 2.6. It noted also that during the process of the Universal Periodic Review of Senegal in February 2009, a request was made for the government to ensure the necessary financial, material, and human resources to allow the national human rights institution to fulfil its mandate.

### **2. Selection and Appointment**

The SCA noted with concern the absence of a transparent and pluralistic process for the nomination of members. The SCA highlighted the requirement for a clear, transparent and participatory selection process that promotes the independence of, and public confidence in the senior leadership of a national human rights institution. It encouraged formalisation of the selection process in legislation, regulation or binding administrative guidelines as appropriate. 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 referred to Paris Principle B.1 and to General Observation 2.2 'Selection and appointment of the governing body'.

### **3. Full time members**

The SCA expressed concern about the appointment of part-time members. It was of the view that the appointment of full-time members would assist in promoting the independence of the CSDH by ensuring a more stable mandate for its members, and promoting the ongoing and effective fulfilment of its functions. It encouraged the CSDH to advocate for the appointment of full-time members and drew its attention to General Observation 2.8.

### **4. Appointment of Staff**

The SCA expressed concern about the capacity of the CSDH to appoint its own staff. The SCA encouraged it to advocate for the capacity to do so, drawing attention to General Observation 2.7.

At its current session, the SCA noted the following observations made by the Committee on the Elimination of Racial Discrimination (CERD/C/SEN/CO/R.16-18) 31 August 2012:

*The Committee recommends that the State party take all necessary measures to ensure full compliance of the CSDH with Paris Principles in order to ensure functional independence. It also encourages the State party to implement its commitment to double the budget of the CSDH, as announced during the interactive dialogue, to ensure that the CSDH has the necessary human and financial resources and to inform the International Coordinating Committee (ICC) about the measures taken so that the CSDH avoids the loss of its "A" status.*

And further noted the following observations made by the Special Rapporteur on the human right to safe drinking water and sanitation (A/HRC/21/42/Add.1) 16 August 2012:

*The Special Rapporteur reiterates the call for urgently increasing financial support for the Senegalese Committee for Human Rights, given its role in monitoring the situation of human rights in the country. Reinforcing the monitoring and technical capacity of the Committee could promote accountability and raise awareness of economic and social rights, including the rights to water and sanitation. This would also give a voice to alleged victims of these human rights.*

The SCA, in its interview with a representative of the CSDH, was informed that the CSDH has not had any members in place since March 2011, and that despite the government's commitment in 2010 to increase the budget of the CSDH from 40 million francs to 70 million francs, no increase has been received.

### **3.12 Spain: Defensoría del Pueblo (DPS)**

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

The SCA notes:

#### **1. Composition and guarantees of independence and pluralism**

Neither the Constitution, nor the enabling law, contains provisions to ensure transparency, pluralism and broad consultation in the selection process for the Defensor(a).

The Defensor(a) is elected by the Parliament for a 5 year term. The DPS informs that civil society organizations informally participate in the selection process, however the selection criteria and qualifications for the Defensor(a) set out in the Organic Law 3/1981 are vague and the role and impact of the participation of civil society organizations in the selection process remains unclear.

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 DPS 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 to its General Observation 2.2 on 'Selection and appointment of the governing body'.

## **2. Staffing**

The DPS affirms that it freely recruits its staff, in accordance with the principles of merit and ability, that gender equality is respected, and that consideration is given to ethnic groups. In addition, the Constitution prohibits discrimination based on sex and race. However, neither the Organic Law 3/1981, nor the rules of procedure of 1983 specify the procedures to ensure that the selection process of staff is pluralist, transparent and inclusive. No measures have been implemented to promote pluralism of staff.

The SCA stresses the need for the DPS, as a single member institution, to consider the pluralism of its staffing, including the representation of minorities and refers it to the GO 2.1 on ensuring pluralism through diverse staff representing the different societal groups within the society.

Furthermore, article 36 of the Law establishes that Deputies and Advisors will cease automatically their functions as soon as a new Defensor del Pueblo is elected. The DPS advised the SCA that, in practice, all staff members positions end when a new Defensor(a) is elected. The new Defensor(a) then decides whether to retain none, some or all of staff.

The SCA is of the view that in order to ensure the on-going and effective fulfilment of the mandate of the DPS, staff ought to have security of tenure, regardless of the election of a new Defensor(a), and ought to be dismissed only for cause.

The SCA encourages the DPS to advocate for an amendment to the Law to explicitly provide for security of tenure for staff following the election of a new Defensor(a).

## **3. Raising awareness on migrants and foreigners' human rights**

The DPS advises that it does not receive many complaints from migrants and foreigners, although credible reports indicate that there are significant and serious human rights issues in Spain regarding migrants and foreigners.

The SCA encourages the DPS to continue efforts to increase awareness its engagement on migrants and foreigners' human rights and to facilitate their ability to bring complaints to the DPS.

The SCA refers the DPS to Paris Principles 3.g on the responsibility of NHRIs to publicize human rights and efforts to combat all forms of discrimination by increasing public awareness, especially through information and education.

#### **4. National Preventive Mechanism**

The SCA notes that the Committee against Torture, in 2009, stated (CAT/C/ESP/CO/5):

*The Committee notes that Organization Act No. 1/2009 established that the Ombudsman would act as the national mechanism for the prevention of torture, in accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It further notes that the same Act provides for the creation of an Advisory Board to provide technical and legal cooperation in the exercise of the functions of the national preventive mechanism; and that the Board would be chaired by the deputy to whom the Ombudsman delegates the functions established in this provision (art. 2).*

*The State party should ensure that the Ombudsman has sufficient human, material and financial resources to discharge his prevention mandate throughout the country independently and effectively. The State party should further ensure that the Advisory Board has a clear jurisdiction and role and that the relationship between the national preventive mechanism and the Board is clearly defined.*

The SCA encourages the DPS to advocate for sufficient human, material and financial resources to discharge its mandate as the national preventive mechanism throughout the country, independently and effectively.

#### **3.13 South Africa: South African human Rights Commission (SAHRC)**

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

The SCA notes:

##### **1. Selection and appointment**

Members of the SAHRC are appointed by the President following an assessment of candidates by an ad hoc committee of the National Assembly, and the subsequent recommendation of suitable candidates by the National Assembly of Parliament.

While the SAHRC reports that in practice, vacancies are advertised widely and the process includes broad consultation with diverse social forces, these elements of the process are not specified in legislation.

The SCA emphasizes the requirement for a clear, transparent and participatory process that ensures merit based selection, and promotes the independence of, and public confidence in, the senior leadership of a national human rights institution. It encourages the SAHRC to advocate for the formalization of these aspects 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 to its General Observation 2.2 on 'Selection and appointment of the governing body'.

## **2. Tenure**

Section 3(1) of the HRC Act stipulates that fulltime or part-time members shall hold office for such fixed terms as the President may determine, but not exceeding seven years. The SCA notes that in practice, members are appointed for a period of five years and that proposed amendments to the HRCA will specify a five year appointment. It encourages the SAHRC to continue its advocacy for a fixed term of appointment as this is of fundamental importance in promoting the independence of the SAHRC and the security of tenure of its members.

The SCA refers to Paris Principle B.3 and to its General Observation 2.9

## **3. Encouraging ratification or accession to international human rights instruments**

The enabling law of the SAHRC does not explicitly provide it with a specific mandate to encourage ratification and implementation of international human rights standards, though the SCA acknowledges that in practice the SAHRC interprets its mandate to 'promote the protection, development and attainment of human rights' as encompassing this function. It notes further the proactive role undertaken by the SAHRC to encourage the State to ratify the ICESCR and other international human rights instruments. The SCA encourages the SAHRC to advocate for the entrenchment of this specific function in its enabling legislation.

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

## **4. Adequate funding**

Due to limitations in funding, the SAHRC reports that it has been unable to undertake certain projects.

The SCA emphasizes the importance of the State providing adequate core funding. In particular, adequate funding should, to a reasonable degree, ensure a gradual and progressive improvement in the organization's operations and the fulfilment of its mandate. This promotes the independence of the NHRI by allowing it to freely determine its priorities and allocate its resources accordingly. The SCA encourages the INHRCB to advocate for an increase in the funding provided by government.

The SCA encourages the SAHRC to continue its advocacy for adequate State funding that is sufficient to enable it to fulfil its mandate.

The SCA refers to Paris Principle B.2 and to its General Observation 2.6

## **5. Conflicts of Interest**

The SCA notes that the HRC Act does not contain provisions for the avoidance of conflicts of interest. The SCA acknowledges that the SAHRC has implemented administrative processes that ensure conflicts of interest are avoided and that it has advocated for changes to the HRC Act to address this issue. The SCA encourages the SAHRC to continue its advocacy in this regard.

## **6. Monitoring Places of Detention**

The SAHRC has a general mandate to monitor and assess the observance of human rights (section 184(1) of the Constitution) but does not have an explicit mandate to monitor places of detention. While the SCA notes that the SAHRC interprets its mandate broadly, the lack of a specific legal power has the potential to limit its ability to conduct its promotion and protection mandate in this area, particularly given the reported incidents of arbitrary detention. The SCA encourages the SAHRC to advocate for changes to its legislation to provide a clear power to make unannounced visits to all public and private places of detention and confinement.

## **7. Legislation**

Various provisions of the HRCA make reference to sections in the interim Constitution that have either been repealed or moved in the new Constitution. The SCA encourages the SAHRC to advocate for changes to its enabling law to ensure that it accurately reflects the relevant provisions of the new Constitution.

## **8. Recommendations of the Commission**

There are no provisions in the new Constitution or the Human Rights Commission Act requiring individuals, government or public bodies to formally respond to its recommendations and reports. The SCA notes with appreciation that the SAHRC has raised this issue with the Department of Justice & Constitutional Development in its submissions on legislative amendments, and recommends that the SAHRC continue to advocate for a legislative requirement that government bodies and others respond to the recommendations of the Commission.

The SCA refers the Commission to General Observation 1.6.

In considering and responding to the issues raised above, the SCA encourages the SAHRC to seek assistance and advice from the Network of African NHRIs and OHCHR.

### **3.14 Togo: National Human Rights Commission (CNDH)**

**Recommendation:** The SCA recommends that the review of the CNDH be **deferred** to its first session in 2013.

The SCA notes that the CNDH requested the deferral of its review until the SCA's next session.

The CNDH informed the SCA that new commissioners were sworn in on November 2012. The CNDH also advised that following its designation as the national preventive mechanism under OPCAT, it has begun the review and revision of its enabling legislation to include this new mandate, and that additional time is therefore required prior to consideration of its application for reaccreditation by the SCA.

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

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

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

##### **4.1 Nepal: National Human Rights Commission (NHRC)**

The SCA decided to undertake a **Special Review** of the accreditation status of the NHRC at its first session in 2013.

The SCA received correspondence suggesting that amendments to the NHRC legislation enacted on 20 January 2012 may impact on its compliance with the Paris Principles.

The SCA sought comments from the NHRC by emails addressed to Mr. Bishal Khanal on 12 October 2012 and Mr. Shree Adhikari on 15 October and 2 November 2012. No response was provided.

In the absence of information from the NHRC, the SCA was unable to assess whether the amended legislation remains compliant with the Paris Principles. Pursuant to Article 16.2 of the ICC Statute, the SCA will undertake a special review at its next session commencing on 13 May 2013.

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

Annex I

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

**STATUTE**

<b>Art 1.1</b>	<p><b>SECTION 1: DEFINITIONS AND INTERPRETATION</b></p> <p><b>In this Statute</b></p> <p><b>Former Rules of Procedure</b> 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><b>ICC</b> 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><b>ICC Bureau</b> means the committee of management established under Article 43 of this Statute;</p> <p><b>Days:</b> In this statute, a reference to days means calendar days, not working days.</p> <p><b>NHRI</b> means a National Human Rights Institution;</p> <p><b>NIU</b> means the National Institutions Unit of the Office of the United Nations High Commissioner for Human Rights;</p> <p><b>Observer</b> 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><b>OHCHR</b> means the Office of the United Nations High Commissioner for Human Rights;</p> <p><b>Paris Principles</b> 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><b>Rules of Procedure of the ICC Sub-Committee on Accreditation</b> 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 15<sup>th</sup> session, held on 14 September 2004 at Seoul, Republic of Korea, as amended at the 20<sup>th</sup> session, held on 14 April 2008 at Geneva, Switzerland, and continued in existence under the transitional provisions of this Statute;</p> <p><b>Regional Coordinating Committee</b> 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"><li>▪ Asia Pacific Forum of National Human Rights Institutions;</li><li>▪ European Coordinating Committee of National Human Rights Institutions;</li><li>▪ Network of African National Human Rights Institutions; and</li><li>▪ Network of National Human Rights Institutions of the Americas;</li></ul> <p><b>Secretary</b> means the individual elected as Secretary under Article 34 who acts as the</p>
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	<p>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><b>Sub-Committee on Accreditation</b> 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><b>Voting member</b> means a NHRI which is a member of the ICC and is accredited with an 'A' status; and <b>non-voting member</b> means a NHRI which is a member of the ICC and is accredited with a 'B' status;</p> <p><b>'Writing' or 'Written'</b> includes any hand-written, typed or printed communication, including telex, cable, electronic mail and facsimile transmissions.</p>
<b>Art 1.2</b>	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.
<b>Art 2</b>	<p><b>SECTION 2: NAME, LOGO AND REGISTERED OFFICE</b></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 <b>Association International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights</b>, in this Statute referred to as the <b>ICC</b>. 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>
<b>Art 3</b>	<p>The official logo of the ICC, in each of the working languages, is the following image:</p>  <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>
<b>Art 4</b>	The registered office of the ICC is in Geneva, Switzerland
<b>Art 5</b>	<p><b>SECTION 3: PURPOSE</b></p> <p><b>Objects</b></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</p>

	promotion and protection of human rights.
<b>Art 6</b>	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.
<b>Art 7</b>	<p><b>Functions</b></p> <p>The functions of the ICC are:</p> <ol style="list-style-type: none"> <li>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"> <li>▪ 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;</li> <li>▪ Collaboration and coordination amongst NHRIs and the regional groups and Regional Coordinating Committees;</li> <li>▪ Communication amongst members, and with stakeholders including, where appropriate, the general public;</li> <li>▪ Development of knowledge;</li> <li>▪ Management of knowledge;</li> <li>▪ Development of guidelines, policies, statements;</li> <li>▪ Implementation of initiatives;</li> <li>▪ Organisation of conferences.</li> </ul> </li> <li>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"> <li>▪ Accreditation of new members;</li> <li>▪ Periodic renewal of accreditation;</li> <li>▪ Special review of accreditation;</li> <li>▪ Assistance of NHRIs under threat;</li> <li>▪ Encouraging the provision of technical assistance;</li> <li>▪ Fostering and promoting education and training opportunities to develop and reinforce the capacities of NHRIs.</li> </ul> </li> <li>3. To undertake such other functions as are referred to it by its voting members.</li> </ol> <p><b>Principles:</b></p> <p>In fulfilling these functions, the ICC will work in ways that emphasize the following principles:</p> <ul style="list-style-type: none"> <li>▪ Fair, transparent, and credible accreditation processes;</li> <li>▪ Timely information and guidance to NHRIs on engagement with the Human Rights Council, its mechanisms, and United Nations human rights treaty bodies;</li> <li>▪ The dissemination of information and directives concerning the Human Rights Council, its mechanisms, and United Nations human rights treaty bodies to NHRIs;</li> <li>▪ Mandated representation of NHRIs;</li> <li>▪ Strong relationships with the OHCHR and the Regional Coordinating Committees that reflect the complementarity of roles;</li> <li>▪ Flexibility, transparency and active participation in all processes;</li> <li>▪ Inclusive decision-making processes based on consensus to the greatest extent possible;</li> <li>▪ The maintenance of its independence and financial autonomy.</li> </ul>
<b>Art 8</b>	<p><b>International Conference</b></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>

<b>Art 9</b>	<p><b>SECTION 4: LIAISON WITH OTHER HUMAN RIGHTS INSTITUTIONS AND NGOs</b></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><b>SECTION 5: PARIS PRINCIPLES ACCREDITATION</b></p> <p>[<b>Note:</b> 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>
<b>Art 10</b>	<p><b>Application for Accreditation Process</b></p> <p>Any NHRI seeking accreditation under the Paris Principles shall apply to the Chairperson of the ICC. Through the ICC Secretariat, that NHRI shall supply the following in support of its application:</p> <ul style="list-style-type: none"> <li>▪ a copy of the legislation or other instrument by which it is established and empowered in its official or published format;</li> <li>▪ an outline of its organizational structure including staff complement and annual budget;</li> <li>▪ a copy of its most recent annual report or equivalent document in its official or published format;</li> <li>▪ 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.</li> </ul> <p>The application shall be decided pursuant to Articles 11 and 12 of this Statute.</p>
<b>Art 11.1</b>	<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>
<b>Art 11.2</b>	<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>
<b>Art 12</b>	<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"> <li>▪ The recommendation of the Sub-Committee shall first be forwarded to the applicant;</li> <li>▪ 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.</li> <li>▪ 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;</li> <li>▪ 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</li> </ul>

	<p>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;</p> <ul style="list-style-type: none"> <li>• 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;</li> <li>• The decision of the ICC Bureau on accreditation is final.</li> </ul>
<b>Art 13</b>	Should the ICC Bureau decide to decline an application for accreditation of any NHRI by reason of its failure to comply with the Paris Principles, the ICC Bureau or its delegate may consult further with that institution concerning measures to address its compliance issues.
<b>Art 14</b>	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.
<b>Art 15</b>	<p><b>Periodic Re-accreditation</b></p> <p>All NHRIs that hold an 'A' status are subject to re-accreditation on a five year cyclical basis. Article 10 applies to NHRIs undergoing re-accreditation. In particular reference to an application for accreditation means both the initial application and the application for re-accreditation.</p>
<b>Art 16.1</b>	<p><b>Review of Accreditation Process</b></p> <p>Where the circumstances of any NHRI change in any way which may affect its compliance with the Paris Principles, that NHRI shall notify the Chairperson of those changes and the Chairperson shall place the matter before the Sub-Committee on Accreditation for review of that NHRI's accreditation status.</p>
<b>Art 16.2</b>	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.
<b>Art 16.3</b>	Any review of the accreditation classification of a NHRI must be finalized within eighteen (18) months.
<b>Art 17</b>	On any review the Chairperson and Sub-Committee on Accreditation shall have all the powers and responsibilities as in an application under Article 10.
<b>Art 18.1</b>	<p><b>Alteration of Accreditation Classification</b></p> <p>Any decision that would serve to remove accredited 'A' status from an applicant can only be taken after the applicant is informed of this intention and is given the opportunity to provide in writing, within one (1) year of receipt of such notice, the written evidence deemed necessary to establish its continued conformity to the Paris Principles.</p>
<b>Art 18.2</b>	<p><b>Authority to immediately suspend accreditation in exceptional circumstances</b></p> <p>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>
<b>Art 18.3</b>	<b>Process for immediate suspension of accreditation in exceptional</b>

	<p><b>circumstances</b></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>
<b>Art 18.4</b>	<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"> <li>- a break in the constitutional or democratic order; or</li> <li>- a declared state of emergency; or</li> <li>- gross violations of human rights;</li> </ul> <p>and this is accompanied by any of the following:</p> <ul style="list-style-type: none"> <li>- there is a change in the NHRI enabling legislation or other applicable law that is contrary to the Paris Principles; or</li> <li>- there is change in the composition of the NHRI that is not undertaken in accordance with the established selection and /or appointment process; or</li> <li>- the NHRI acts in a way that seriously compromises its compliance with the Paris Principles.</li> </ul>
<b>Art 19</b>	<p>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.</p>
<b>Art 20</b>	<p>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.</p>
<b>Art 21</b>	<p>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.</p>
<b>Art 22</b>	<p>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.</p>
<b>Art 23</b>	<p>In the event that accreditation lapses or is revoked or suspended, all rights and</p>

	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.
<b>Art 24.1</b>	<b>SECTION 6: MEMBERS</b> <b>Eligibility</b> 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.
<b>Art 24.2</b>	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.
<b>Art 25</b>	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.
<b>Art 26</b>	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.
<b>Art 27</b>	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.
<b>Art 28</b>	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.
<b>Art 29.1</b>	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.
<b>Art 29.2</b>	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.
<b>Art 30</b>	<b>Independence of Members</b> 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.
<b>Art 31.1</b>	<b>SECTION 7: REGIONAL GROUPING OF MEMBERS</b> 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"> <li>▪ Africa</li> <li>▪ The Americas</li> <li>▪ Asia-Pacific</li> </ul>

	<ul style="list-style-type: none"> <li>▪ Europe</li> </ul>
<b>Art 31.2</b>	The members within any regional group may establish such sub-regional groupings as they wish.
<b>Art 31.3</b>	The members of regional groups may establish their own procedures concerning meetings and activities.
<b>Art 31.4</b>	Each regional group is to appoint four (4) members accredited with an 'A' status which shall each have a representative on the ICC Bureau.
<b>Art 32</b>	<p><b>SECTION 8: GENERAL MEETINGS OF MEMBERS</b></p> <p>The General Meeting is composed by the ICC members and constitutes the supreme power of the association.</p>
<b>Art 33</b>	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.
<b>Art 34</b>	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.
<b>Art 35</b>	If required under Swiss Law, the General Meeting must elect an auditor who shall not be a member of the ICC.
<b>Art 36</b>	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.
<b>Art 37</b>	The agenda of the meeting shall be submitted to the members with the written notice of meeting.
<b>Art 38</b>	<p><b>SECTION 9: RIGHT TO VOTE AND DECISIONS</b></p> <p>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.</p>
<b>Art 39</b>	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.
<b>Art 40</b>	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.
<b>Art 41</b>	A quorum of at least one half of the total number of members is necessary.
<b>Art 42</b>	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.
<b>Art 43</b>	<b>SECTION 10: ICC BUREAU</b> The ICC is managed by a committee entitled the ICC Bureau which shall comprise sixteen (16) individuals, including the Chairperson and the Secretary.
<b>Art 44</b>	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' 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.
<b>Art 45</b>	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.
<b>Art 46</b>	<b>Powers of the ICC Bureau</b> 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"> <li>▪ decide applications for accreditation after considering a recommendation from the Sub-Committee on Accreditation;</li> <li>▪ decide applications for membership of the ICC;</li> <li>▪ summon General Meetings of the ICC;</li> <li>▪ 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 ;</li> <li>▪ use and accept the services of the NIU as the Secretariat for the ICC, the ICC Bureau and its Sub-Committee on Accreditation;</li> <li>▪ appoint from the members of the ICC Bureau a person to be the treasurer of the ICC;</li> <li>▪ acquire, lease, dispose of or otherwise deal in property of any kind;</li> <li>▪ open bank accounts, appoint signatories thereto and define the authority of the signatories;</li> <li>▪ spend money and do all things it considers desirable to promote the purposes of the ICC;</li> <li>▪ delegate any function to a nominated person, standing committee or subcommittee of persons or members;</li> </ul>

	<ul style="list-style-type: none"> <li>▪ co-ordinate and arrange conferences, meetings, standing committees and sub-committees, and other activities;</li> <li>▪ engage, dismiss or suspend employees, agents and contractors;</li> <li>▪ enter into contracts ;</li> <li>▪ engage professional assistance for the preparation of annual and other financial statements, to obtain legal advice, and for any other purpose;</li> <li>▪ 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;</li> <li>▪ receive financial grants and donations, and gifts of any kind;</li> <li>▪ 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.</li> </ul>
<b>Art 47</b>	<p><b>Membership Subscription</b></p> <p>The ICC Bureau shall as and when it considers appropriate recommend to a General Meeting that an annual membership subscription be set by the General Meeting. Once set the Bureau will ensure procedures are in place to collect membership subscriptions. The ICC Bureau in its discretion may waive in whole or in part the annual subscription for a member if satisfied that the member is unable to pay the full amount due.</p>
<b>Art 48</b>	<p><b>Meetings of the ICC Bureau</b></p> <p>A meeting of the ICC Bureau shall be held in conjunction with each General Meeting of the ICC and at least two (2) times each year. Otherwise, the ICC Bureau shall meet at such times and places as it or the Chairperson shall decide. Written notice summoning a meeting shall be given at least four (4) weeks in advance unless the ICC Bureau agrees to a shorter period for that meeting. The agenda of the meeting shall be submitted to the members with the written notice of meeting.</p>
<b>Art 49</b>	<p><b>The Chairperson and Secretary</b></p> <p>The Chairperson, or in his or her absence the Secretary, shall direct the work of the General Meeting and the ICC Bureau. Until otherwise decided by a General Meeting, she or he shall represent the ICC in accordance with developed practices and authorities followed by the Chairperson acting under the former Rules of Procedure.</p> <p>In particular, the Chairperson may speak at the Human Rights Council, its mechanisms, United Nations human rights treaty bodies and, when invited, at other international organisations:</p> <ul style="list-style-type: none"> <li>▪ on behalf of the ICC on topics authorised by a General Meeting or the ICC Bureau;</li> <li>▪ on behalf of individual NHRIs when authorised by them;</li> <li>▪ on thematic human rights issues to promote policy decided by a</li> </ul>

	<p>General Meeting, a biennial conference or by the ICC Bureau; and</p> <ul style="list-style-type: none"> <li>▪ generally to advance the objects of the ICC.</li> </ul>
<b>Art 50.1</b>	<p><b>Conduct of ICC Bureau Business</b></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>
<b>Art 50.2</b>	A majority of the members of the ICC Bureau shall constitute a quorum.
<b>Art 50.3</b>	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.
<b>Art 50.4</b>	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.
<b>Art 50.5</b>	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.
<b>Art 50.6</b>	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.
<b>Art 50.7</b>	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.
<b>Art 50.8</b>	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.
<b>Art 51</b>	<p><b>Further Procedure</b></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>

<b>Art 52</b>	<p><b>SECTION 11: FINANCIAL ADMINISTRATION</b></p> <p><b>Accounting Year</b></p> <p>The financial year ends on 31 December of each year.</p>
<b>Art 53</b>	<p><b>SECTION 12: ASSETS OF THE ICC</b></p> <p>The assets of the ICC comprise and include:</p> <ul style="list-style-type: none"> <li>▪ grants obtained from international and national public and semi-public organizations;</li> <li>▪ donations;</li> <li>▪ subscriptions;</li> <li>▪ funds entrusted to it by other organizations, associations, businesses or institutions; and</li> </ul>

	<ul style="list-style-type: none"> <li>▪ income and property of any kind received from whatever source.</li> </ul>
<b>Art 54</b>	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.
<b>Art 55</b>	<p><b>SECTION 13: DISSOLUTION AND LIQUIDATION</b></p> <p><b>Dissolution</b></p> <p>The ICC may be dissolved by resolution of the ICC in a General Meeting. A General Meeting called for this purpose shall be convened specially. At least one half of the members must be present. If this proportion is not present the General Meeting must be reconvened after an interval of at least two (2) weeks. It can then validly deliberate with whatever numbers of members are present. In any case the dissolution can only be approved by a majority of three quarters of the members present.</p>
<b>Art 56</b>	<p><b>Liquidation</b></p> <p>The winding up of the ICC and the liquidation of its assets shall be carried out by one (1) or more liquidators appointed by the General Meeting. The General Meeting must authorize the liquidator or liquidators to distribute the net assets to another association or public organization having similar purposes to the ICC. No part of the net assets available for distribution shall be paid to any member of the ICC.</p>
<b>Art 57</b>	<p><b>SECTION 14: RULES OF PROCEDURE</b></p> <p>The General Meeting may adopt, amend or revoke rules of procedure in relation to the working methods of the ICC, including General Meetings and international conferences, to regulate or clarify any matter contemplated by this Statute.</p>
<b>Art 58</b>	<p><b>SECTION 15: AMENDMENT OF STATUTE</b></p> <p>This Statute may be amended only by a General Meeting of the ICC.</p>
<b>Art 59</b>	<p><b>SECTION 16: TRANSITIONAL PROVISION</b></p> <p>The Sub-Committee on Accreditation and the Rules of Procedure for the ICC Sub-Committee on Accreditation are by this Statute continued in existence, and shall remain in existence until amended or revoked by the ICC Bureau. The Sub-Committee on Accreditation is hereby constituted a sub-committee of the ICC Bureau. The Rules of Procedure for the ICC Sub-Committee on Accreditation are incorporated into this Statute as <b>Annex I</b></p>
<p><b>EXECUTED BY:</b>  Ms. Jennifer Lynch, Q.C.  30 July 2008  Amended at a General Meeting held at Nairobi, 21<sup>st</sup> October 2008  Amended at a General Meeting held at Geneva, 24<sup>th</sup> 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 15<sup>th</sup> session, held on 14 September 2004, Seoul, Republic of Korea. Amended by the members of the ICC at its 20<sup>th</sup> session, held on 15 April 2008, Geneva, Switzerland.*

***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.*

**ICC SUB-COMMITTEE ON ACCREDITATION  
GENERAL OBSERVATIONS**

**1. Competence and responsibilities**

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

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

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

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

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

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

**2. Composition and guarantees of independence and pluralism**

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

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

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

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

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

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

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

**2.4 Staffing by secondment:**

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

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

**2.5 IMMUNITY:** IT IS STRONGLY RECOMMENDED THAT PROVISIONS BE INCLUDED IN NATIONAL LAW to protect legal liability for actions undertaken in the official capacity of the NHRI.

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

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

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

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

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

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

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

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

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

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

**2.10 Administrative regulation**

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

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

### **3. Methods of operation**

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

### **5. Additional issues**

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

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

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

### **6. Procedural issues**

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

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

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

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

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

**6.3 NHRIs under review:** Pursuant to Article 16 of the ICC Statute<sup>1</sup>, 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

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<sup>1</sup> Formerly article 3(g) of the ICC Rules of Procedure.

**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 AA status accreditation, including voting in the ICC and participation rights before the Human Rights Council, until the suspension is lifted or the accreditation status of the NHRI is changed.

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

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

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

In very exceptional circumstances, should more than one national institution seek accreditation by the ICC, it should be noted that Article 39 of the ICC Statute<sup>2</sup> provides that the State shall have one speaking right, one voting right and, if elected, only one ICC Bureau member.

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

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

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

**6.7 NHRI annual report:** The Sub-Committee finds it difficult to review the status of an NHRI in the absence of a current annual report, that is, a report dated not earlier than one year before the time it is scheduled to undergo review by the Sub-Committee. The Sub-Committee stresses the importance for an NHRI to prepare and publicize an annual report on its national situation with regard to

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<sup>2</sup> Formerly Rule 3 (b) of the ICC Rules of procedure.

human rights in general, and on more specific matters. This report should include an account of the activities undertaken by the NHRI to further its mandate during that year and should state its opinions, recommendations and proposals to address any human rights issues of concern.

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

*Geneva, November 2009.*