



## Генеральная Ассамблея

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### Совет по правам человека

Тринадцатая сессия

Пункт 2 повестки дня

Ежегодный доклад Верховного комиссара  
Организации Объединенных Наций  
по правам человека и доклады Управления  
Верховного комиссара по правам человека  
и Генерального секретаря

### **Процесс, используемый в настоящее время Международным координационным комитетом национальных учреждений по поощрению и защите прав человека для аккредитации национальных учреждений в соответствии с Парижскими принципами**

**Доклад Генерального секретаря\* \*\***

#### *Резюме*

Настоящий доклад представляется во исполнение решения 2/102 Совета по правам человека от 6 октября 2006 года, в котором Совет постановил просить Верховного комиссара по правам человека продолжать ее деятельность в соответствии со всеми предыдущими решениями, принятыми Комиссией по правам человека, и обновлять соответствующие доклады и исследования. В настоящем докладе содержится информация о деятельности Подкомитета по аккредитации Международного координационного комитета национальных учреждений по поощрению и защите прав человека, в том числе о совершенствовании процесса аккредитации и принятии общих замечаний.

\* Представлено с опозданием.

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## I. Введение

1. Настоящий доклад представляется во исполнение решения 2/102 Совета по правам человека, в котором Совет постановил призвать Верховного комиссара по правам человека продолжать ее деятельность в соответствии со всеми предыдущими решениями, принятыми Комиссией по правам человека, и обновлять соответствующие доклады и исследования. В настоящем докладе в общих чертах рассказывается о прогрессе, достигнутом с момента представления Совету по правам человека предыдущего доклада по вопросу об аккредитации национальных правозащитных учреждений (A/HRC/10/55), и его следует читать в сочетании с докладом Генерального секретаря о национальных учреждениях по поощрению и защите прав человека (A/HRC/13/44), который, в частности, содержит информацию о деятельности Управления Верховного комиссара по правам человека (УВКПЧ) в целях создания и укрепления национальных правозащитных учреждений, мерах, принимаемых в этой связи правительствами и упомянутыми учреждениями, и сотрудничестве национальных правозащитных учреждений с международными механизмами по правам человека.

## II. Подкомитет по аккредитации

2. Мандат Подкомитета по аккредитации Международного координационного комитета национальных учреждений по поощрению и защите прав человека состоит в рассмотрении и анализе заявлений об аккредитации и в представлении членам Бюро Комитета рекомендаций относительно соблюдения заявителями принципов, касающихся статуса национальных учреждений (Парижских принципов). В Подкомитет по аккредитации входит по одному аккредитованному учреждению со статусом А от каждой из четырех региональных групп: Африки, Северной и Латинской Америки, Азиатско-Тихоокеанского региона и Европы. Члены Подкомитета назначаются региональными группами на трехлетний срок, который может быть возобновлен. Подкомитет назначает консенсусом на срок в один год, который может быть возобновлен, одного из своих членов для выполнения функций Председателя Подкомитета. В настоящее время членами Подкомитета являются представители национальных правозащитных учреждений Канады (от Северной и Латинской Америки); Того (от Африки); Республики Корея (от Азиатско-Тихоокеанского региона); и Германии (от Европы). УВКПЧ участвует в работе Подкомитета по аккредитации в качестве постоянного наблюдателя и выполняет функции секретариата Международного координационного комитета. Подкомитет высоко ценит поддержку и профессионализм сотрудников секретариата Международного координационного комитета (Секции УВКПЧ по национальным учреждениям и региональным механизмам).

3. В 2009 году Подкомитет по аккредитации рассмотрел положение дел с аккредитацией (подтверждением аккредитации) правозащитных учреждений Боснии и Герцеговины, Чада и оккупированной палестинской территории. Он рассмотрел новые заявления, поступившие от правозащитных учреждений Катара, Мавритании, Республики Молдова, Туниса, Украины, Швейцарии<sup>1</sup> и Шри-Ланки, и а также от Комиссии по правам человека Шотландии, и провел

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<sup>1</sup> Федеральная комиссия по делам женщин.

специальные обзоры, касающиеся национальных правозащитных учреждений Алжира, Греции, Люксембурга, Малайзии, Непала и Эквадора.

4. На сегодняшний день Международным координационным комитетом аккредитовано 65 национальных правозащитных учреждений со статусом А, т.е. учреждений, полностью соблюдающих Парижские принципы.

5. Таблица, отражающая положение дел с аккредитацией по состоянию на январь 2010 года, содержится в приложении I. В приложения II и III включены доклады Подкомитета по аккредитации за соответственно март и ноябрь 2009 года. Общие замечания, подготовленные Международным координационным комитетом по состоянию на 2009 год, содержатся в приложении IV.

### **III. Совершенствование процесса аккредитации Международного координационного комитета**

6. На своей семнадцатой сессии, проведенной 12 апреля 2006 года, Международный координационный комитет учредил рабочую группу с целью изучения процесса аккредитации национальных правозащитных учреждений и подготовки для Комитета по данному вопросу документа для обсуждения. Рабочая группа, в состав которой входили тогдашние члены Подкомитета по аккредитации, подготовила документ для обсуждения, в котором рассматривались три аспекта: а) состав Подкомитета по аккредитации, его роль и обязанности; б) процесс аккредитации; и с) содержание критериев или минимальных стандартов, установленных для аккредитации. Этот документ был представлен Международному координационному комитету на его восемнадцатой и девятнадцатой сессиях. Кроме того, членам было предложено представить в письменном виде дополнительные замечания с целью разработки итогового документа, который был представлен Комитету и утвержден им на его двадцатой сессии в апреле 2008 года.

7. Документ, утвержденный Международным координационным комитетом в апреле 2008 года, предусматривает ряд мер по совершенствованию процедуры аккредитации, в том числе:

а) процесс обжалования с целью обеспечения большей прозрачности и соблюдения надлежащей процедуры для национальных правозащитных учреждений, которые, как представляется, не соблюдают Парижские принципы;

б) более тщательное рассмотрение каждого заявления об аккредитации, включая все документы и заявление о соблюдении требований, представляемые национальными правозащитными учреждениями до начала сессии, вместе с подробным резюме, подготовленным секретариатом;

с) подготовку более конкретных рекомендаций для каждого национального учреждения (независимо от того, имеет оно статус А или В) с целью обеспечения полного соблюдения Парижских принципов - даже до истечения установленного для пересмотра аккредитаций пятилетнего срока;

д) более активное и широкое распространение информации о рекомендациях Подкомитета по аккредитации среди национальных правозащитных учреждений и других участников, с тем чтобы они могли играть проактивную роль в контексте последующей деятельности, проводимой в соответствующей стране Организацией Объединенных Наций или региональными координационными органами национальных правозащитных учреждений. Доклады Подкомитета по аккредитации также размещаются в Интернете ([www.nhri.net](http://www.nhri.net)).

8. В 2008 году Международный координационный комитет разработал новый статут с целью его регистрации в качестве объединения в соответствии со швейцарским законодательством. Этот статут, основанный на существующих правилах процедуры Комитета, был утвержден на девятой Международной конференции национальных учреждений по поощрению и защите прав человека, которая проходила в Найроби с 21 по 24 октября 2008 года, после чего на общем совещании Международного координационного комитета, состоявшемся в Женеве 23–27 марта 2009 года, в него были внесены поправки. Процедура аккредитации, определенная в статье 12 статута, предусматривает, что, когда Комитет по аккредитации выносит решение об аккредитации, такое решение рассматривается в качестве рекомендации о статусе аккредитации, окончательное же решение принимается Бюро Комитета по завершении следующего процесса:

- a) рекомендация Подкомитета сначала направляется заявителю;
- b) заявитель может оспорить рекомендацию в течение 28 дней с момента ее получения путем направления через секретариат Комитета письменного возражения на имя Председателя Комитета;
- c) затем рекомендация направляется членам Бюро Комитета для принятия решения. В случае получения возражения от заявителя, оно вместе со всеми соответствующими материалами, полученными в связи с заявлением и возражением, также направляется членам Бюро;
- d) любой член Бюро, несогласный с рекомендацией, в течение 20 дней с момента ее получения уведомляет Председателя Подкомитета и секретариат Международного координационного комитета. Секретариат незамедлительно уведомляет всех членов Бюро о поступившем возражении и предоставляет всю необходимую информацию для разъяснения этого возражения. Если в течение 20 дней по получении этой информации большинство членов Бюро уведомляет секретариат о том, что у них имеется подобное возражение, то рекомендация препровождается следующему заседанию Бюро для принятия решения;
- e) если большинство членов Бюро не выражает возражения в отношении рекомендации в течение 20 дней по ее получении, то рекомендация считается одобренной Бюро;
- f) решение Бюро по аккредитации является окончательным.

9. В соответствии со своими правилами процедуры Подкомитет по аккредитации использует для целей аккредитации следующие категории:

- А: соблюдение Парижских принципов
- В: неполное соблюдение Парижских принципов или отсутствие достаточной информации для принятия решения
- С: несоблюдение Парижских принципов.

10. Правила процедуры Подкомитета по аккредитации остаются в силе и включены в качестве приложения в статут Международного координационного комитета (статья 59).

11. В отчетный период Подкомитет по аккредитации продолжал заниматься разработкой новых процедур. В преддверии своих мартовской и ноябрьской сессий 2009 года Подкомитет получил информацию от организаций гражданского общества, которую он направил соответствующим национальным правозащитным учреждениям вместе с просьбой представить замечания, если таковые имеются, для рассмотрения Подкомитетом. Резюме всех документов

подготавливаются секретариатом и направляются соответствующим национальным правозащитным учреждениям до рассмотрения их заявлений об аккредитации Подкомитетом. Национальные учреждения имеют в своем распоряжении неделю для представления замечаний по этим резюме. Затем резюме и замечания направляются членам Подкомитета, а также размещаются в Интернете ([www.nhri.net](http://www.nhri.net)) после утверждения рекомендации Подкомитета на заседании Бюро Международного координационного комитета.

12. В 2009 году Подкомитет по аккредитации активизировал свои усилия с целью привлечения к процессу аккредитации региональных координационных комитетов. Комитеты всех четырех субрегионов всегда приглашаются на сессии Подкомитета в качестве наблюдателей. Подкомитет приветствовал участие в его мартовской сессии представителей секретариата Сети африканских национальных правозащитных учреждений, секретариата Сети национальных учреждений по поощрению и защите прав человека в Южной и Северной Америке и Азиатско-Тихоокеанского форума национальных правозащитных учреждений, а также участие в его ноябрьской сессии 2009 года представителя Азиатско-Тихоокеанского форума.

13. На четырнадцатом ежегодном совещании Азиатско-Тихоокеанского форума, которое проходило в Аммане 3–6 августа 2009 года и было организовано Национальным центром по правам человека Иордании при помощи УВКПЧ, национальные правозащитные организации Азиатско-Тихоокеанского региона приняли решение временно отказаться от используемого Форумом процесса аккредитации и применять для целей принятия в члены Форума процедуры аккредитации Международного координационного комитета. В долгосрочном плане такой подход будет способствовать повышению согласованности и укреплению процесса аккредитации Международного координационного комитета.

14. В 2009 году Подкомитет по аккредитации начал налаживать с Подкомитетом по предупреждению пыток и других жестоких, бесчеловечных или унижающих достоинство видов обращения и наказания неофициальное сотрудничество по вопросам, представляющий общий интерес, включая случаи, когда национальные правозащитные учреждения назначаются в качестве национальных превентивных механизмов в соответствии с Факультативным протоколом к Конвенции против пыток.

#### **IV. Общие замечания**

15. В соответствии с практикой, принятой на его совещании в октябре 2006 года, Подкомитет по аккредитации продолжал разрабатывать общие замечания в отношении аккредитации. Эти общие замечания касаются вопросов общего характера или важных аспектов толкования Парижских принципов и призваны служить руководством для его членов в том, что касается процесса аккредитации и осуществления Парижских принципов. В соответствии с положениями документа о принятии решений, который был утвержден Международным координационным комитетом на его двадцатой сессии, общие замечания, будучи инструментами толкования Парижских принципов, могут быть использованы:

а) для представления учреждениям инструкций по разработке их собственных процедур и механизмов в целях обеспечения соблюдения Парижских принципов;

b) для того, чтобы убедить национальные правительства рассмотреть или обеспечить решение вопросов, касающихся соблюдения соответствующим учреждением стандартов, содержащихся в общих замечаниях;

c) для того, чтобы направлять действия Подкомитета по аккредитации в его решениях, касающихся новых заявлений об аккредитации, заявлений о подтверждении аккредитации или специальных обзоров.

## V. Выводы и рекомендации

16. Генеральный секретарь признает, что процесс аккредитации, осуществляемый Подкомитетом по аккредитации Международного координационного комитета при поддержке Управления Верховного комиссара по правам человека, является динамичным процессом, и дает высокую оценку тому, что он становится все более строгим, объективным и транспарентным. Генеральный секретарь также подчеркивает важную роль, которую играет этот процесс в деле укрепления независимости и повышения эффективности национальных правозащитных учреждений, что в конечном счете приведет к укреплению национальных систем защиты прав человека.

17. Генеральный секретарь отмечает, что после того, как Азиатско-Тихоокеанский форум прекратил использовать свой процесс аккредитации, правила аккредитации членов Международного координационного комитета стали применяться для всех национальных правозащитных учреждений. Генеральный секретарь считает, что это способствует повышению согласованности процесса аккредитации и обеспечивает единообразие системы аккредитации.

18. Генеральный секретарь с удовлетворением отмечает, что число аккредитованных национальных правозащитных учреждений продолжает расти, что обзоры уже проведены по всем учреждениям, имеющим статус А, и что новый цикл начнется в 2010 году. Генеральный секретарь также приветствует политику проведения периодических обзоров по всем учреждениям, имеющим статус В, что служит для них стимулом и подспорьем в деле повышения эффективности соблюдения международных стандартов. Генеральный секретарь высоко оценивает тот факт, что тщательная работа Подкомитета по аккредитации направлена на оказание поддержки национальным правозащитным учреждениям в деле направления правительствам их соответствующих стран запросов о внесении любых необходимых изменений в соответствующие законоположения, в то время как процедура специальных обзоров служит тому, чтобы национальные правозащитные учреждения имели возможность повысить эффективность своей деятельности в соответствии с Парижскими принципами.

19. Генеральный секретарь признает расширение участия в этом процессе информированных заинтересованных сторон, например региональных координационных органов национальных правозащитных учреждений, имеющих статус наблюдателей, а также растущий интерес организаций гражданского общества. Это может способствовать повышению эффективности повседневной работы национальных правозащитных учреждений, а также применению более всеобъемлющего подхода к вопросам защиты прав человека на национальном уровне.

20. Генеральный секретарь также дает высокую оценку конкретным и имеющим четкие сроки рекомендациям, которые выносятся по итогам рассмотрения заявлений национальных правозащитных учреждений об аккредитации. Генеральный секретарь призывает государства и другие заинтересованные стороны,

включая учреждения Организации Объединенных Наций, объединить усилия и обеспечить выполнение рекомендаций Подкомитета по аккредитации, с тем чтобы национальные правозащитные учреждения полностью соблюдали Парижские принципы как в законодательстве, так и на практике.

21. Генеральный секретарь приветствует подготовку Международным координационным комитетом общих замечаний, которые служат дополнительным и прогрессивным инструментом толкования Парижских принципов. Генеральный секретарь, в частности, приветствует общее замечание по вопросу о взаимодействии национальных правозащитных учреждений и международной системы по правам человека и призывает укреплять это взаимодействие с целью обеспечения большей согласованности между международной и национальными системами защиты прав человека.

22. Генеральный секретарь приветствует активное участие национальных правозащитных учреждений в региональных консультациях, организованных УВКПЧ вместе с Африканским союзом, Организацией американских государств и Советом Европы по вопросам укрепления сотрудничества между региональными и международными механизмами по правам человека в 2009 году, и призывает национальные правозащитные учреждения удвоить усилия в целях укрепления сотрудничества и диалога с региональными механизмами по правам человека и выполнения их рекомендаций.

23. Генеральный секретарь приветствует работу, которую продолжают проводить региональные сети национальных правозащитных учреждений в Африке, Южной и Северной Америке, Азиатско-Тихоокеанском регионе и Европе, и рекомендует расширять сотрудничество между региональными сетями и УВКПЧ. Генеральный секретарь, в частности, приветствует план по разработке рамок многолетнего сотрудничества между УВКПЧ и Азиатско-Тихоокеанским форумом с целью оказания поддержки национальным правозащитным учреждениям в этом регионе.

24. Генеральный секретарь отмечает, что национальные правозащитные учреждения, аккредитованные Международным координационным комитетом, пользуются все большим признанием у растущего числа международных механизмов по правам человека, включая специальные процедуры, договорные органы и Совет по правам человека, и получают доступ к этим механизмам.



## Приложения

### Annex I

#### Chart of the status of national institutions accredited by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights

##### Accreditation status as of January 2010

In accordance with the Paris Principles and the ICC Statute, the following classifications for accreditation are used by the ICC:

- A:** Compliance with the Paris Principles;
- B:** Not fully in compliance with the Paris Principles;
- C:** Non-compliance with the Paris Principles;
- A(R):** *This category (accreditation with reserve) was granted where insufficient documentation was submitted to confer A status; is no longer in use by the ICC. It is maintained only for those NHRIs which were accredited with this status before April 2008.*

##### A status institutions

<i>National institution</i>	<i>Status</i>	<i>Year reviewed</i>
<b>Asia and the Pacific</b>		
Afghanistan: Independent Human Rights Commission	A	October 2007 Placed under review Nov 2008 – A
Australia: Australian Human Rights and Equal Opportunity Commission	A	1999 Oct 2006
India: National Human Rights Commission of India	A	1999 Oct 2006
Indonesia: National Human Rights Commission of Indonesia	A	2000 March 2007
Jordan: National Centre for Human Rights	A	April 2006 March 2007 October 2007 Will be reviewed in October 2010

<i>National institution</i>	<i>Status</i>	<i>Year reviewed</i>
Malaysia: Human Rights Commission of Malaysia (SUHAKAM)	A (see SCA report Nov 2009)	2002 April 2008 Will be reviewed in 2nd half of 2009 To be reviewed at the SCA second session of 2010
Mongolia: National Human Rights Commission of Mongolia	A	2002 – A(R) 2003 Nov 2008
Nepal: National Human Rights Commission of Nepal	A	2001 – A(R) 2002 – A Special Review started in April 06; Under review in March 07 October 2007 Nov 2008 – A (to be reviewed in 2nd half of 2009) In 2009 deferred to first session of 2010
New Zealand: New Zealand Human Rights Commission	A	1999 Oct 2006
Occupied Palestinian Territory: The Palestinian Independent Commission for Citizen's Rights	A	2005 – A(R) March 2009 – A
Qatar: National Committee for Human Rights	A	Oct 2006 (B) Nov 2008: deferral to March 2009 March 2009 – A, Will be reviewed in 2010 (first session)
Philippines: Philippines Commission on Human Rights	A	1999 March 2007 October 2007
Timor-Leste: Provedoria for Human Rights and Justice	A	April 2008
Republic of Korea: National Human Rights Commission of the Republic of Korea	A	2004 Nov 2008
Thailand: National Human Rights Commission	A	2004 Nov 2008
<b>Africa</b>		
Egypt: National Council for Human Rights	A	Apr 2006 – B Oct 2006

<i>National institution</i>	<i>Status</i>	<i>Year reviewed</i>
Ghana: Commission on Human Rights and Administrative Justice	A	2001 Nov 2008
Kenya: Kenya National Commission on Human Rights	A	2005 Nov 2008
Malawi: Malawi Human Rights Commission	A	2000 March 2007
Mauritius: Commission Nationale des Droits de L'homme	A	2002 April 2008
Morocco: Conseil Consultatif des Droits de L'homme du Maroc	A	1999 – A(R) 2001 October 2007 Will be reviewed in October 2010
Namibia: Office of the Ombudsman	A	2003 (A(R)) April 2006
Niger: Niger Commission Nationale des Droits de L'homme et des Libertés Fondamentales	A	2001 – A(R) 2002 – A Apr 2006 (reviewed) April 2008
Rwanda: National Commission for Human Rights	A	2001 October 2007
Senegal: Comité Sénégalais des Droits de L'homme	A	2000 October 2007 Will be reviewed in October 2010
South Africa: South African Human Rights Commission	A	1999 – A(R) 2000 October 2007
Togo: National Commission for Human Rights	A	1999 – A(R) 2000 October 2007
Uganda: Uganda Human Rights Commission	A	2000 – A(R) 2001 April 2008
United Republic of Tanzania: National Human Rights Commission	A	2003 – A(R) 2005 – A(R) October 2006
Zambia: Zambian Human Rights Commission	A	2003 A(R) Oct 2006
<b>The Americas</b>		
Argentina: Defensoría del Pueblo de la Nación Argentina	A	1999 Oct 2006

<i>National institution</i>	<i>Status</i>	<i>Year reviewed</i>
Bolivia (Plurinational State of): Defensor del Pueblo	A	1999 – B 2000 March 2007
Canada: Canadian Human Rights Commission	A	1999 Oct 2006
Colombia: Defensoría del Pueblo	A	2001 October 2007
Costa Rica: Defensoría de los Habitantes	A	1999 Oct 2006
Ecuador: Defensor del Pueblo	A	1999 – A(R) 2002 April 2008 2009
El Salvador : Procuraduría para la Defensa de los Derechos Humanos	A	April 2006
Guatemala: Procuraduría de los Derechos Humanos de Guatemala	A	1999 – B 2000 – A(R) 2002 April 2008
Honduras: Comisionado Nacional de los Derechos Humanos de Honduras	A	2000 October 2007
Mexico: Comisión Nacional de los Derechos Humanos	A	1999 Oct 2006
Nicaragua: Procuraduría para la Defensa de los Derechos Humanos	A	April 2006
Panama: Defensoría del Pueblo de la República de Panamá	A	1999 Oct 2006
Paraguay: Defensoría del Pueblo de la República del Paraguay	A	2003 Nov 2008
Peru: Defensoría del Pueblo	A	1999 March 2007
Venezuela: Defensoría del Pueblo	A	2002 April 2008
<b>Europe</b>		
Albania: Republic of Albania People's Advocate	A	2003 – A(R) 2004 Nov 2008
Armenia: Human Rights Defender of Armenia	A	Apr 2006 – A(R) Oct 2006

<i>National institution</i>	<i>Status</i>	<i>Year reviewed</i>
Azerbaijan: Human Rights Commissioner (Ombudsman)	A	Oct 2006
Bosnia and Herzegovina: Human Rights Ombudsman of Bosnia and Herzegovina	A (see SCA report Nov 09)	2001 – A(R) 2002 – A(R) 2003 – A(R) 2004 Nov 2008: deferral of review to Oct/Nov 2009 Placed under review – Nov 2009
Croatia: Ombudsman of the Republic of Croatia	A	April 2008
Denmark: Danish Institute for Human Rights	A	1999 – B 2001 October 2007
France: Commission Nationale Consultative des Droits de L'homme	A	1999 Oct 2006 review deferred to Oct 2007 October 2007
Georgia: Public Defender's Office	A	October 2007
Germany: Deutsches Institut für Menschenrechte	A	2001 – A(R) 2002 – A(R) 2003 Nov 2008
Great Britain: Equality and Human Rights Commission	A	Nov 2008
Greece: National Commission for Human Rights	A	2000 – A(R) 2001 October 2007 Reviewed Nov 2009 A status maintained – Nov 09
Ireland: Irish Human Rights Commission	A	2002 – A(R) 2003 – A(R) 2004 Nov 2008
Luxembourg: Commission Consultative des Droits de L'homme du Grand-Duché de Luxembourg	A (see SCA report March 2009)	2001 – A(R) 2002 Reviewed in Nov 09 To be reviewed in Oct/Nov 2009
Norway: Center for Human Rights	A	2003 A(R) 2004 A(R) 2005 A(R) April 2006
Northern Ireland (United Kingdom)	A	2001 – B

<i>National institution</i>	<i>Status</i>	<i>Year reviewed</i>
of Great Britain and Northern Ireland): Northern Ireland Human Rights Commission		April 2006 – B Oct 2006
Poland: Commissioner for Civil Rights Protection	A	1999 October 2007
Portugal: Provedor de Justiça	A	1999 October 2007
Russian Federation: Commissioner for Human Rights in the Russian Federation	A	2000 – B 2001 – B Nov 2008
Spain: El Defensor del Pueblo	A	2000 October 2007
Ukraine: Ukrainian Parliament Commissioner for Human Rights	A	2008 – B March 2009 – A

#### **A Reserve status institutions**

<i>National institution</i>	<i>Status</i>	<i>Year reviewed</i>
<b>Africa</b>		
Democratic Republic of Congo: Observatoire National des Droits de l'Homme	A(R)	2005

#### **B status institutions**

<i>National institution</i>	<i>Status</i>	<i>Year reviewed</i>
<b>Asia and the Pacific</b>		
Sri Lanka: Human Rights Commission of Sri Lanka	B	2000 A status placed under review March 2007 October 2007 Reviewed in March 2009
Maldives: Human Rights Commission	B	April 2008
<b>Africa</b>		
Algeria: Commission Nationale des Droits de l'homme	B	2000 – A(R) 2002 – A(R) 2003 – A Placed under review – April 2008 2009 – B
Cameroon: National Commission on	B	1999 – A

<i>National institution</i>	<i>Status</i>	<i>Year reviewed</i>
Human Rights and Freedoms		Oct 2006
Burkina Faso: Commission Nationale des Droits de L'homme	B	2002 – A(R) 2003 – A(R) 2005 (B) April 2006, March 2007
Chad: Commission Nationale des Droits de L'homme	B	2000 – A(R) 2001 – A(R) 2003 – A(R) Nov. 2009 – (B)
Mauritania: Commission nationale des Droits de l'Homme	B	Nov. 2009
Nigeria: Nigerian Human Rights Commission	B	1999 – A(R) 2000 – A October 2006 (special review) Placed under review March 2007 October 2007
Tunisia: Comité Supérieur des Droits de l'Homme et des Libertés Fondamentales	B	2009
<b>Europe</b>		
Austria: The Austrian Ombudsman Board	B	2000
Belgium: The Centre for equal opportunities and opposition to racism	B	1999
Republic of Moldova: Human Rights Centre of Moldova	B	Nov. 2009
Netherlands: Equal Treatment Commission of The Netherlands	B	1999 – B 2004
Slovakia: National Centre for Human Rights	B	2002 – C October 2007
Slovenia: Republic of Slovenia Human Rights Ombudsman	B	2000
Switzerland: Federal Commission against Racism (FCR)	B	1998
<b>C status institutions</b>		
<i>National institution</i>	<i>Status</i>	<i>Year reviewed</i>
<b>Africa</b>		
Benin: Commission Béninoise des	C	2002

<i>National institution</i>	<i>Status</i>	<i>Year reviewed</i>
<b>Droits de L'homme</b>		
Madagascar: Commission Nationale des Droits de l'Homme de Madagascar	C	2000 – A(R) 2002 – A(R) 2003 – A(R) Apr 2006 – status withdrawn Oct 2006
<b>Americas</b>		
Antigua and Barbuda: Office of the Ombudsman	C	2001
Barbados: Office of the Ombudsman	C	2001
Puerto Rico (United States of America): Oficina del Procurador del Ciudadano del Estado Libre Asociado de Puerto Rico	C	March 2007
<b>Asia and the Pacific</b>		
Hong Kong Special Administrative Region of China: Hong Kong Equal Opportunities Commission	C	2000
Iran (Islamic Republic of): Commission Islamique des Droits de L'homme	C	2000
<b>Europe</b>		
Romania: Romanian Institute for Human Rights	C	March 2007
Switzerland: Commission fédérale pour les questions féminines (CFQF)	C	March 2009

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**Suspended institutions**


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<i>National institution</i>	<i>Status</i>	<i>Year reviewed</i>
<b>Africa</b>		
<b>Americas</b>		
<b>Asia and the Pacific</b>		
Fiji: Fiji Human Rights Commission	Suspended Note: Fiji resigned from the ICC on 2 April 2007	2000 Accreditation suspended in March 2007 for review in October 2007 Commission resigned from the ICC 2 April 2007



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<i>National institution</i>	<i>Status</i>	<i>Year reviewed</i>
<b>Europe</b>		
Sweden: Equal Opportunities Ombudsman	Accreditation Status lapsed due to merging of institutions into one NHRI, effective 1 January 2009	1999 – A Requested a deferral in October 2007

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## Annex II

### **International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights**

#### **Report and recommendations of the session of the Subcommittee on Accreditation**

Geneva, 26–30 March 2009

#### **1. Background**

**1.1.** In accordance with the Statute of the International Coordinating Committee of National Institutions for the Protection and Promotion of Human Rights (ICC), the Sub-Committee on Accreditation (the Sub-Committee) has the mandate to consider and review applications for accreditation, re-accreditation and special or other reviews received by the National Institutions Unit 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. The Sub-Committee assesses compliance with the Paris Principles in law and in practice.

**1.2.** In accordance with the Sub-Committee Rules of Procedure, the Sub-Committee is composed of representatives of each region: the National Human Rights Institutions (NHRIs) of Germany for Europe (chair), Rwanda for Africa (represented by Morocco when absent), the Republic of Korea for Asia-Pacific and Canada for the Americas. The Sub-Committee convened from 26 to 30 March 2009. OHCHR participated as a permanent observer and in its capacity as ICC Secretariat. In accordance with new procedures, regional coordinating bodies of NHRIs were invited to attend as observers. The Sub-Committee welcomed the participation, as observers, of a representative of the Secretariat of the Network of African NHRIs, as well as the Chairperson of that Network, and representatives of the Secretariat of the Network of NHRIs of the Americas and the Asia Pacific Forum of NHRIs.

**1.3.** The Sub-Committee notes the procedures for its work as set out in the ICC Statute adopted on 30 July 2008, as amended on 21 October 2008, and further amended on 24 March 2009 (attached as Annex 1). The Sub-Committee applied these new procedures to its work in the current session, as set out below.

**1.4.** Pursuant to article 10 of the Statute, the Sub-Committee considered applications for accreditation from NHRIs of Qatar, Sri Lanka, Switzerland (*Commission Fédérale pour les Questions Féminines*) and Ukraine.

**1.5.** Pursuant to article 15 of the Statute, the Sub-Committee also considered an application for re-accreditation from the institution of the Occupied Palestinian Territory.

**1.6.** Pursuant to article 17 of the Statute, the Sub-Committee reviewed certain issues regarding the NHRIs of Algeria, Ecuador, Luxembourg and Malaysia.

**1.7.** In accordance with the Paris Principles and the ICC Sub-Committee Rules of Procedure, the different classifications for accreditation used by the Sub-Committee are:

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

**1.8.** The General Observations (attached as Annex 2), 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 Sub-Committee on Accreditation 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 Sub-Committee to find that it was not Paris Principle compliant;
  - (ii) If the Sub-Committee has noted concern about an institution's compliance with any of the General Observations, it may consider what steps, if any, have been taken by an institution to address those concerns in future applications. If the Sub-Committee is not provided with proof of efforts to address the General Observations previously made, or offered a reasonable explanation why no efforts had been made, it would be open to the Sub-Committee to interpret such lack of progress as non-compliance with the Paris Principles.

**1.9.** The Sub-Committee formulated a new General Observation (attached as Annex 3).

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

**1.11.** The Sub-Committee 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.** When the Sub-Committee declares its intention to consider particular issues within a specified time-frame, the outcome of the review may lead to a recommendation that may affect the accreditation status. In the event additional issues arise during the course of the review, the Sub-Committee will so notify the NHRI.

**1.13.** Pursuant to Article 12 of the 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:

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

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

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

**1.15.** The Sub-Committee 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 Sub-Committee needed to contact the Institution. In addition, OHCHR desk officers and, as appropriate, OHCHR field officers were available to provide further information, as needed.

**1.16.** The Sub-Committee acknowledges the high degree of support and professionalism of the staff of the ICC Secretariat (OHCHR National Institutions Unit).

## **2. Implementation of new procedures**

**2.1.** The Sub-Committee continued to develop its procedures in the ongoing effort to advance the principles of rigour, transparency, and fairness in the accreditation process.

**2.2.** As initiated at the November 2008 session of the Sub-Committee, the March 2009 session was open to NHRI regional coordinating committees to attend as observers. All four committees were invited to participate. A representative of, the Secretariat of the Network of African NHRIs, the Secretariat of the Network of NHRIs of the Americas and the Asia Pacific Forum of NHRIs attended the session. The Sub-Committee encourages the participation of all regional coordinating committees in future sessions.

**2.3.** The Sub-Committee shared the summaries prepared by the Secretariat with the concerned NHRIs before the consideration of their applications and they were given one week to comment on them. All comments received, together with the summaries, were then sent to the members of the Sub-Committee. Once the recommendations of the Sub-Committee are adopted by the ICC Bureau, according to the procedures, the summaries and the comments and the statement of compliance will be posted on the NHRI Forum ([www.nhri.net](http://www.nhri.net)). The summaries are currently only prepared in English, due to current financial constraints.

**2.4.** The Sub-Committee considered information received from civil society. The Sub-Committee shared that information with the concerned NHRIs and considered their responses.

**2.5.** The Sub-Committee amended paragraph 3.6 (new), 4.2 and 6.1 of its Rules of Procedure as well as its General Observations 6.3 and 6.6, in keeping with the ICC Statute and its current procedures. The Sub-Committee **recommends** that the ICC Bureau approve the amendments to the Rules of Procedure and General Observations.

**2.6.** The Sub-Committee considered the issue of re-accreditation of status B NHRIs and **recommends** that all NHRIs that hold B status be subject to re-accreditation on a 5 year cyclical basis.

### **3. Specific recommendations – accreditation applications**

#### **3.1. Qatar: National Human Rights Committee (NHRC)**

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

The Sub-Committee expresses appreciation for the work done by the NHRC, as well as the inclusion of non-citizens under its mandate, especially given the national circumstances and societal composition.

It expresses appreciation for the legislative changes that have increased the number of civil society representatives on the NHRC, their majority status on the NHRC and the removal of voting rights for Government representatives.

It also expresses appreciation for the regular increase in funding for the NHRC and that the NHRC has management and control over the use of those funds.

The Sub-Committee (“SCA”) notes the following:

- While the NHRC considers and proposes new members, the existing legislative process refers to the selection of new members by the Emir. The existing legislation should establish a clear, transparent and pluralistic nomination process. The SCA refers to General Observation 2.1 “Ensuring pluralism” and General Observation 2.2 “Selection and appointment of the governing body”.
- There is no legislative provision guaranteeing the immunity of NHRC members for actions undertaken in their official capacity. The SCA refers to General Observation 2.5 “Immunity”.
- Financial security and autonomy through the creation of an individual entry in the budget which is solely attributed to the NHRC is not ensured. The SCA refers to General Observation 2.6 “Adequate Funding”.
- There is no legislative provision for the dismissal of NHRC members. The SCA refers to General Observation 2.9 “Guarantee of tenure for members of governing bodies”.
- The SCA encourages the NHRC to monitor developments in the international human rights system and to use such developments to inform and develop their domestic activities where applicable. Furthermore, and where relevant, the SCA encourages the NHRC to interact directly with the international human rights system (UN Human Rights Treaty Bodies, Special Procedures Mandate Holders and Human Rights Council, including the UPR), providing information independently of the Government and ensuring follow up action to recommendations resulting from that system. It refers to General Observation 1.4 “Interaction with the International Human Rights System”.

**The Sub-Committee will consider these issues at its first session of 2010.** The Sub-Committee encourages the NHRC to seek advice and assistance from OHCHR and the regional network of NHRIs.

### **3.2. Sri Lanka: Human Rights Commission (SLHRC)**

**Recommendation:** After reviewing the information provided by the SLHRC, the Sub-Committee recommends that its **B Status** be maintained. It encourages the SLHRC to submit a complete accreditation application for a future session.

The Sub-Committee (“SCA”) notes the following:

- It observes that new SLHRC members are due to be appointed in April 2009. While recognising that the Constitutional Council may not be constituted at this time to make recommendations on appointments as provided for in the SLHRC’s legislation, the SCA nevertheless stresses the need for a transparent and consultative selection process in practice. The SCA strongly encourages the SLHRC to engage with the government to ensure the adoption of such a process. The SCA refers to General Observation 2.2 “Selection and Appointment of the Governing Body”.
- It expresses its concern that the SLHRC does not appear to have released regular and detailed reports or statements in relation to killings, abductions and disappearances stemming from the human rights crisis in Sri Lanka. While the SCA acknowledges the work of the SLHRC’s regional offices in extremely difficult circumstances, it reemphasises the need for the SLHRC to carry out its core protection mandate to demonstrate its vigilance and independence during the ongoing state of emergency.
- It commends the SLHRC on its concrete efforts to implement a regular consultation mechanism with civil society organisations in line with the ICC recommendation on the same. However, the SCA notes that consultation so far has been described as selective. The SCA emphasises that engagement with civil society must be broad based, to ensure the pluralistic representation of social forces as required by the Paris Principles.
- It welcomes the publication of the 2006–07 Annual Report in line with the ICC recommendation on the same, but notes that the report provides insufficient information to assess the ongoing work of the SLHRC and appears to be only available in English. The SCA refers to General Observation 6.7 “NHRI Annual Report”.
- It further notes that the Tamil and Sinhala sections of the SLHRC website are not functioning. The SCA highlights the importance of ensuring that the SLHRC is accessible to all groups in society.

The Sub-Committee encourages the SLHRC to seek advice and assistance from OHCHR and the regional network of NHRIs.

### **3.3. Switzerland: Commission fédérale pour les questions féminines (CFQF)**

**Recommendation:** The Sub-Committee recommends that the CFQF be accredited with **status C**.

The Sub-Committee (“SCA”) notes:

- The mandate of the CFQF largely focuses on research and investigation of the status of women’s rights in Switzerland. It refers to General Observation 1.2 “Human Rights mandate” and stresses the importance that NHRIs be endowed with a broad human rights mandate.

- Appointment of members is largely done based on nominations from Government authorities and social organizations. The SCA refers to General Observation 2.2 “Selection and appointment of the governing body” and emphasizes the importance that the selection and appointment process involves; a transparent process; broad consultation through the selection and appointment process; advertising vacancies broadly; maximizing the number of potential candidates from a wide range of societal groups; and selecting members to serve in their own individual capacity rather than on behalf of the organization they represent.
- Nine of the 20 members of the CFQF are appointees from the Swiss Government. The SCA refers to General Observation 2.3 “Government representatives on National Institutions”.
- Members of the CFQF do not enjoy immunity for actions undertaken in their official capacity. The SCA refers to General Observation 2.5 “Immunity”.
- The CFCQ receives an annual credit from the Government to support its activities. The SCA refers to General Observation 2.6 “Adequate Funding”.
- There is no provision in the legislation nor in the institution’s internal regulations stipulating salaries or any form of remuneration for CFQF’s members. The SCA refers to General Observation 2.6 “Adequate Funding”.
- None of the members of the CFQF functions on a full-time basis. The SCA refers to General Observation 2.8 “Full-Time Members”.
- There are no written procedures governing dismissal of members of the Institution, nor are there any written procedures to govern resignation of members. The SCA refers to General Observation 2.9 “Guarantee of Tenure for Members of Governing Bodies”.
- The CFQF must seek prior approval of the Swiss Federal Department of the Interior prior to publishing its communications, reports, recommendations, and propositions. The SCA recalls that the Paris Principles proscribe that NHRIs should be able to exercise its mandate in an independent manner.

#### **3.4. Ukraine: Office of the Ukrainian Parliament Commissioner for Human Rights (UPCHR)**

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

The Sub-Committee (“SCA”) notes the following:

- The mandate of the UPCHR refers to the parliamentary control over constitutional human and citizens’ rights and freedoms and to the protection of every individual’s rights within the jurisdiction of Ukraine. The SCA refers to General Observation 1.2 “Human Rights mandate” and stresses that NHRIs should be mandated with specific functions to both protect and promote human rights, such as those listed in the Paris Principles.
- Civil society and other groups are not involved in the appointments process. The SCA refers to General Observation 2.2 “Selection and appointment of the governing body” and stresses that this process should include a transparent process, broad consultation throughout the selection and appointment process, advertising vacancies broadly, and maximizing the number of potential candidates from a wide range of societal groups.
- The importance of financial independence, both in terms of budget submissions, as well as sufficient funding. The SCA refers to General Observation 2.6 “Adequate

funding”, and furthermore stresses that an NHRI should not be subject to financial control which might affect its independence.

#### **4. Specific recommendations – re-accreditation application**

##### **4.1. Palestine: Palestine Independent Commission for Human Rights (PICHR)**

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

The Sub-Committee expresses appreciation for the work of the PICHR, noting that it operates effectively and efficiently in a context of extreme insecurity and a difficult humanitarian situation. PICHR has conducted itself with a heightened level of vigilance and independence in the exercise of its mandate.

The Sub-Committee (“SCA”) notes the following:

- While acknowledging the specific circumstances regarding the Palestinian Authority, the Sub-Committee encourages the PICHR to continue to engage with the Palestinian Authority to formalize its status through the adoption of an enabling law. The SCA refers to General Observation 1.1 “Establishment of national institutions”.
- Neither the Presidential Decree nor the by-laws contain a definition of human rights. The SCA refers to General Observation 1.2 “Human Rights mandate”.
- The by-laws do not provide guarantees of tenure for members of the governing body, nor do they contain provisions setting out a dismissal procedure for Board members. The SCA refers to General Observation 2.9 “Guarantee of tenure for members of governing bodies”.
- The budget of the PICHR is nearly totally funded through international donor funding. The SCA refers to General Observation 2.6 “Adequate Funding”, in particular that funding from external sources should not compose the core funding of the NHRIs.

The Sub-Committee notes that Palestine has received a standing invitation to participate as an observer in the sessions and the work of the UN General Assembly and maintains a permanent observer mission at the UN Headquarters.

#### **5. Specific recommendations – reviews under article 17**

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

**Recommendation:** The Sub-Committee recommends that the CNCPPDH be accredited with status B. It takes note of a letter dated 25 March 2009 from the CNCPPDH President to the ICC Chair informing that the Prime Minister has instructed the Minister of Justice to elaborate a legislative text on the status of the CNCPPDH. This text is to be submitted to Parliament at its spring session 2009.

The Sub-Committee (“SCA”) notes the following:

- It expresses appreciation that the CNCPPDH provided the Secretariat with the Annual Human Rights Report 2007, following the April 2008 Sub-Committee’s recommendation on the same.
- It reiterates its concern that the CNCPPDH is established by a Presidential decree, which is an act of the executive, rather than a constitutional or legislative text as



called for in the Paris Principles and General Observation 1.1 “Establishment of national institutions”.

- No additional information was provided by the CNCPPDH on follow up action on the remaining April 2008 recommendations, despite having been reminded to do so by the Secretariat through a communication dated 12 January 2009.
- The Chair and the members of the CNCPPDH are appointed and dismissed without a clear and transparent process. The SCA has not been informed of plans to establish these processes, following its April 2008 recommendation on the same. The SCA refers to General Observation 2.2 “Selection and appointment of the governing body”.
- It reiterates the need for the CNCPPDH to interact effectively and independently with the United Nations Human Rights System. The SCA refers to General Observation 1.4 “Interaction with the International Human Rights System”.

The Sub-Committee urges the CNCPPDH to apply for accreditation once the legislation has been enacted and the issues above appropriately addressed. The Sub-Committee encourages the CNCPPDH to seek advice and assistance from OHCHR and the regional network of NHRIs.

### 5.2. Ecuador: Defensoría del Pueblo de Ecuador (DPE)

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

The Sub-Committee is satisfied that the revisions to the Constitution of Ecuador did not negatively affect the independence and effectiveness of the DPE.

The Sub-Committee (“SCA”) notes the following:

- It recommends that amendments to the organic law resolve discrepancies (e.g. term of office) between the revised Constitution and the current organic law and be in line with the Paris Principles.
- The *Consejo de Participación Ciudadana y Control Social* is in charge of the appointment of the *Defensor*. The SCA calls on the *Defensor* to ensure the *Consejo* is aware of and encourages the incorporation of relevant Paris Principles requirements in future selection processes. The SCA refers to General Observation 2.2 “Selection and appointment of the governing body”.
- It reiterates the need for the *Defensoría* to interact effectively with the United Nations Human Rights System. The SCA refers to General Observation 1.4 “Interaction with the International Human Rights System”.

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

**Recommendation:** The Sub-Committee recommends that consideration of the CCDH be **deferred** to its next session. It gives the CCDH the opportunity to provide, in writing, within the one year period expiring November 2009, the documentary evidence deemed necessary to establish its continued conformity with the Paris Principles. The CCDH **retains its “A status”** during this period.

The Sub-Committee welcomes the additional information provided by the CCDH following its November 2008 review and acknowledges that efforts are being made to address most of the concerns expressed by it.

The Sub-Committee welcomes the Government’s expressed intention to establish a Special Nominations Committee composed of representatives of civil society and/or human rights institutions that would advise on the designation of the members of the CCDH.

The Sub-Committee (“SCA”) notes the following:

- While the CCDH is composed of members coming from different political, ideological and religious backgrounds, neither the 2000 Regulations nor the Draft Law provides any legal requirements to ensure the pluralism of the institution’s membership and staff composition. The SCA refers to General Observation 2.1 “Ensuring pluralism”.
- The CCDH is developing an internal regulatory document dealing with appointment and dismissal of members. The SCA recommends that selection, appointment and grounds for dismissal be in accordance with the Paris Principles. The SCA refers to General Observations 2.2 “Selection and appointment of the governing body” and 2.9 “Guarantees of tenure for members of governing bodies”.
- None of the CCDH’s members occupies a permanent full-time position. The SCA refers to General Observation 2.8 “Full-time Members”.
- There is indication that the CCDH exercises only limited budgetary autonomy and that the budget may not be sufficient for the CCDH to carry out a protection function in conformity with the Paris Principles. The SCA refers to General Observation 2.6 “Adequate funding”.
- The Draft Law does not provide CCDH members with functional immunity. The SCA refers to General Observation 2.5 “Immunity”.
- It recommends that the CCDH further develop relationships with civil society. The SCA refers to General Observation 1.5 “Cooperation with other human rights institutions”.

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

**Recommendation:** The Sub-Committee recommends, pursuant to Article 16.3 of the ICC Statute, that consideration of SUHAKAM be **deferred** to its next session. SUHAKAM **retains its “A status”** during this period.

The Sub-Committee welcomes the entry of the Bill to Parliament (i.e. amendment to the 1999 Human Rights Commission of Malaysia Act), which was passed by the House of Representatives on 25 March 2009 and is currently before the Senate. It notes that some of the concerns it raised at its April 2008 session have been addressed (e.g. the expansion of the term of office to 3 years renewable).

However, the Sub-Committee (“SCA”) notes that the legislation is not yet finalised and that not all the issues it raised at its April 2008 Session have been addressed in the amended legislation, namely the following:

- Although the appointment process has been strengthened by the recent legislative amendments, the SCA expresses its disappointment that the amendments do not make the process more transparent through a requirement for broad based participation in the nomination, review, and selection of Commissioners. The SCA notes that this process may be further strengthened through inclusion and participation of civil society. The SCA refers to its General Observations 2.1 “Ensuring pluralism” and 2.2 “Selection and Appointment of the Governing Body”.
- The SCA expresses its concern with regard to the inclusion of performance indicators, as established by the Prime Minister, used in relation to re-appointment or dismissal decisions. While acknowledging the value of such indicators in making clear the expectations of Commissioners, it stresses that such requirements must be clearly established; appropriately circumscribed, so as not to interfere in the

independence of members; and made public. The SCA refers to its General Observation 2.9 “Guarantee of tenure for members of governing bodies”.

- While acknowledging SUHAKAM’s interaction with the International Human Rights System, in accordance with its General Observation 1.4 “Interaction with the International Human Rights System”, the SCA stresses the need for SUHAKAM to continue to promote ratification and implementation of international human rights instruments.

The Sub-Committee will consider whether these issues have been dealt with through further amendments to the pending legislation or through regulatory or administrative mechanisms, which are clear, transparent and participatory.

## Annex III

### **International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights**

#### **Report and recommendations of the session of the Subcommittee on Accreditation**

Geneva, 16–18 November 2009

#### **6. Background`**

**6.1.** In accordance with the Statute (attached as Annex I) of the International Coordinating Committee of National Institutions for the Protection and Promotion of Human Rights (ICC), the Subcommittee on Accreditation (SCA) has the mandate to consider and review applications for accreditation, re-accreditation and special or other reviews received by the National Institutions and Regional Mechanisms Section (NIRMS) of the Office of the United Nations High Commissioner for Human Rights (OHCHR) in its capacity as the ICC Secretariat, and to make recommendations to the ICC Bureau members with regard to the compliance of applicant institutions with the Paris Principles (attached as Annex 2). The SCA assesses compliance with the Paris Principles in law and in practice.

**6.2.** In accordance with the SCA Rules of Procedure, the SCA is composed of representatives of each region: the National Human Rights Institutions (NHRIs) of Canada (Chair) for the Americas, Germany for Europe, Togo for Africa, and the Republic of Korea for Asia-Pacific.

**6.3.** The SCA convened from 16 to 18 November 2009. OHCHR participated as a permanent observer and in its capacity as ICC Secretariat. In accordance with established procedures, regional coordinating bodies of NHRIs were invited to attend as observers. The SCA welcomed the participation of a representative of the Secretariat of the Asia Pacific Forum of NHRIs, and the ICC representative in Geneva.

**6.4.** The SCA also welcomed as observers the participation of members of the Subcommittee on the Prevention of Torture (SPT) during the consideration of the NHRI of the Republic of Moldova, and their contribution on the work of the NHRI as a National Preventive Mechanism (NPM).

**6.5.** At the next session, the SCA will develop a General Observation to outline the criteria to be considered when dealing with NHRIs serving as NPMs or the national monitoring mechanism under article 33 of the Convention on the Rights of Persons with Disabilities (CRPD). The SCA welcomes input and suggestions from ICC members and others on possible content of the General Observation.

**6.6.** The SCA notes receipt of the draft compilation of the SCA rules and working procedures as prepared by the Secretariat;<sup>2</sup> and has requested the Secretariat, together with the Canadian NHRI, to consolidate it for SCA consideration at the next session.

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<sup>2</sup> Including ICC Statute provisions on the SCA; Rules of Procedures of the SCA; new procedures adopted by the SCA from October 2007 – November 2008; implementation of

**6.7.** At the November 2009 ICC Bureau meeting, Bureau members made suggestions to improve the accreditation process, including the development and use of General Observations. After consideration and discussion of these recommendations, the SCA decided to embark on a review of the ICC General Observations.

**6.8.** Pursuant to article 10 of the Statute, the SCA considered applications for accreditation from institutions of Mauritania, the Republic of Moldova, Scotland (United Kingdom of Great Britain and Northern Ireland) and Tunisia.

**6.9.** Pursuant to article 15 of the Statute, the SCA also considered applications for re-accreditation from the NHRIs of Bosnia and Herzegovina and Chad.

**6.10.** Pursuant to article 17 of the Statute, the SCA reviewed certain issues regarding the NHRIs of Greece, Luxembourg, Malaysia, and Nepal.

**6.11.** In accordance with the Paris Principles and the ICC SCA Rules of Procedure, the classifications for accreditation used by the SCA are:

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

**6.12.** The General Observations (attached as Annex 3), as interpretative tools of the Paris Principles, may be used to:

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

(b) Persuade domestic governments to address or remedy issues relating to an institution's compliance with the standards articulated in the General Observations;

(c) Guide the SCA in its determination of new accreditation applications, re-accreditation applications or other review:

(i) If an institution falls substantially short of the standards articulated in the General Observations, it will be open for the SCA to find that it was not Paris Principle compliant.

(ii) If the SCA has noted concern about an institution's compliance with any of the General Observations, it may consider what steps, if any, have been taken by an institution to address those concerns in future applications. If the SCA is not provided with proof of efforts to address the General Observations previously made, or offered a reasonable explanation why no efforts had been made, it would be open to the SCA to interpret such lack of progress as non-compliance with the Paris Principles.

**6.13.** The SCA also considered issues of concern regarding certain NHRIs. The SCA will follow up with the relevant institutions.

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

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new procedures from the SCA report of March 2009; and procedural issues in the ICC General Observations as per March 2009 SCA report.

**6.15.** 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.

**6.16.** When the SCA declares its intention to consider particular issues within a specified time-frame, the outcome of the review may lead to a recommendation that may affect the accreditation status. In the event additional issues arise during the course of the review, the SCA will so notify the NHRI.

**6.17.** 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.

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

**6.19.** 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.

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

**6.21.** The SCA shared the summaries prepared by the Secretariat with the concerned NHRIs before the consideration of their applications and they provided comments on them in one week. All comments received, together with the summaries, were then sent to the

members of the SCA. As in previous cases, once the recommendations of the SCA are adopted by the ICC Bureau, the summaries and the comments and the statement of compliance will be posted on the NHRI Forum ([www.nhri.net](http://www.nhri.net)). The summaries are only prepared in English, due to financial constraints.

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

## **7. Specific recommendations – accreditation applications**

### **7.1. Mauritania: Commission National des Droits de l'Homme (NHRC)**

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

The SCA expresses its appreciation for the work done by the NHRC in the promotion and protection of human rights.

The SCA takes note that the enabling legislation of the NHRC is currently being reviewed.

The SCA notes the following:

1. The NHRC is established by an Executive Order. The Paris Principles and the ICC General Observations indicate that an NHRI must be established in a constitutional or legal text, given that creation by an instrument of the Executive is not adequate to ensure permanency and independence. The SCA refers to General Observation 1.1 “Establishment of national institutions”.
2. The NHRC is placed under the Office of the Prime Minister (article 1 of the Executive Order) and it reports annually to the Head of State (article 6 of the Executive Order). This does not guarantee the independence and autonomy of an NHRI. The SCA refers to General Observation 2.10 “Administrative regulation”.
3. The selection and appointment process is not established in the Executive Order and is not transparent, consultative and pluralistic. The SCA refers to General Observation 2.2 “Selection and appointment of the governing body”.
4. Article 27 of the Executive Order stipulates that the Government provides the NHRC with the necessary administrative staff. This impairs the ability of the NHRC to hire its own staff. The Secretary General is appointed by the President of the Republic. The SCA refers to General Observation 2.4 “Staffing by secondment” and 2.7 “Staff of an NHRI”.
5. The budget of the NHRC is insufficient to allow it to effectively carry out its mandate. This includes the hiring of an adequate number of staff. The SCA refers to General Observation 2.6 “Adequate Funding”.

The SCA will consider whether these issues have been effectively dealt with through amendments to the legislation.

The SCA also encourages the NHRC to continue to interact actively with the international human rights system (UN Human Rights Treaty Bodies, Special Procedures Mandate Holders and Human Rights Council, including the UPR), providing information independently of the Government and later ensuring follow up action to recommendations resulting from that system.

### **7.2. Republic of Moldova: Parliamentary Advocates & Centre for Human Rights of Moldova (HRCM)**

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

The SCA expresses its appreciation for the work done by the HRCM, carried out in difficult circumstances, especially due to the inadequacy of resources allocated to the institution that affects its capacity to effectively deliver its mandate.

The SCA notes the following:

1. The selection and appointment process as enshrined in the law does not ensure all necessary guarantees of a transparent, consultative and pluralist process. Additionally, there is no provision to involve civil society in this process. The SCA refers to its General Observations 2.1 “Ensuring pluralism” and 2.2 “Selection and appointment of the governing body”.
2. The lack of adequate funding is a structural problem of the HRCM. Despite the significant efforts made by the institution, inadequate funding undermines the capacity of the HRCM to hire staff, make use of equipped premises and carry out activities.
3. The HRCM should be equipped with adequate resources in order to ensure the gradual and progressive realization of the improvement of the organization’s operations and the fulfilment of its mandate. The HRCM budget should also have a separate budget line for the NPM function. The SCA refers the HRCM to the General Observation 2.6 “Adequate Funding” in order to ensure its involvement in the budget process, and the sustainability of its financial, material and human resources. The attribution of additional powers and functions related to the work of NPM, which was not accompanied by any allocation of additional resources, can further affect the HRCM’s ability to function effectively. With regard to the HRCM’s role as the National Preventative Mechanism (NPM) under the Optional Protocol to the Convention Against Torture, the Subcommittee draws the attention of the HRCM to the SCA on the Prevention of Torture’s Preliminary Guidelines for the ongoing development of NPMs, and in particular sub-paragraph (g) which provides that “adequate resources should be provided for the specific work of national preventive mechanisms, in accordance with article 18.3 of the Optional Protocol; these should be ring-fenced, in terms of both budget and human resources”.
4. The enabling law provides the HRCM with both protection and promotion functions, and encourages the institution to interpret it in an extensive way which includes broad protection and promotion of all human rights, including through active cooperation with civil society.
5. The HRCM is encouraged to continue its constructive engagement with the international human rights system and refers to General Observation 1.4 “Interaction with the International Human Rights System”.

The SCA requires further clarification on the role, functions, decision-making and budget allocations between the four Parliamentary Advocates and the Centre, and amongst the Parliamentary Advocates.

The SCA encourages the HRCM to seek the cooperation of the ICC, OHCHR and the regional coordinating group of NHRIs (European Group) in order to address the above mentioned matters.

### **7.3. Scotland (United Kingdom): Scottish Human Rights Commission (SHRC)**

**Recommendation:** The SCA recommends that consideration of the application for accreditation of the SHRC be **deferred** to its first session of 2010.

The SCA notes that the SHRC was established in December 2008 and has been operational for eleven months. The effectiveness of the SHRC and its compliance with the



Paris Principles could not be determined in the present session. The SCA refers to General Observation 6.6 “More than one national human rights institution in a state”.

#### **7.4. Tunisia: Comité Supérieur des Droits de l’Homme et des Libertés Fondamentales (SCHRFF)**

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

The SCA expresses its concern with the following:

1. There are no provisions in the legislation setting out a transparent and pluralistic nomination process of members which include objective membership criteria. The ultimate appointment is done by the President of the Republic. The SCA refers to the Paris Principles regarding the appointment of the members of the national institution and to General Observation 2.2 “Selection and appointment of the governing body”.
2. There are no legislative provisions regarding the immunity of members for liability for actions undertaken in their official capacity, nor for the dismissal or removal process of a member. The SCA refers to General Observations 2.5 “Immunity” and 2.9 “Guarantee of tenure for members of government bodies”.
3. There are no provisions indicating whether members of the governing body are full or part time, however, Article 5 of the Rules of Organization states that the members are not remunerated but receive an allowance for each meeting they attend. The SCA refers to General Observation 2.8 “Full-time Members”.
4. The institution is required to submit all its reports to the President of the Republic. Pursuant to article 6 of the law the SCHRFF undertakes investigations upon request of the President of the Republic and reports the results of the investigations to the President. This provision is not consistent with the exercise of the protection function that an NHRI is to carry out in an independent and unfettered manner. The SCA refers to General Observation 2.10 “Administrative regulation”.
5. The 2005 Annual Report on the human rights situation of Tunisia does not reflect the recent activities, conclusions and recommendations made by the SCHRFF. The SCA refers to General Observation 6.7 “NHRI annual report”.

The SCA encourages the SCHRFF to interact actively with the international human rights system (UN Human Rights Treaty Bodies, Special Procedures Mandate Holders and Human Rights Council, including the UPR), providing information independently of the government and later ensuring follow up action to recommendations resulting from that system.

## **8. Specific recommendations – re-accreditation applications**

### **8.1. Bosnia and Herzegovina: Institution of Human Rights Ombudsmen for Bosnia and Herzegovina (IHROBH)**

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

The SCA expresses appreciation of the work of the IHROBH, noting that it operates in a situation where the merger of three distinct institutions is currently on-going, and the law has not yet been clarified.

The SCA notes the following:

1. Civil society and other groups are not involved in the appointment process. The SCA refers to General Observation 2.2 “Selection and appointment of the governing body”.
2. The importance of financial autonomy, both in terms of budget submissions and financial controls. The SCA refers to General Observation 2.6 “Adequate funding”.
3. The Law on Salaries in Bosnia & Herzegovina has annulled the provision in the Law of the Human Rights Ombudsman that entitled members to a salary equal to that of a Constitutional Judge. This derogation may impact the Ombudsman’s independence.
4. It commends the IHROBH on its concrete efforts to implement a regular consultation mechanism with civil society organisations. However, this cooperation should be formalised. The SCA also emphasises that engagement with civil society must be broad based, to ensure the pluralistic representation of social forces as required by the Paris Principles.
5. It recommends that the mandate of the IHROBH be strengthened to include human rights promotion and refers to General Observation 1.2 “Human rights mandate”.
6. In the absence of an Annual Report for 2008–2009, the SCA is not able to assess the activities implemented over the past year, and encourages the IHROBH to submit this in any future application for accreditation. The SCA refers to General Observation 6.7 on “NHRI Annual report”.
7. It reiterates the need for the IHROBH to interact effectively and independently with the International Human Rights System. The SCA refers to General Observation 1.4 “Interaction with the International Human Rights System”.

The SCA encourages the IHROBH to seek advice and assistance from OHCHR and the regional coordinating group of NHRIs (European Coordinating Committee).

## **8.2. Chad: Commission National des Droits de l’Homme (CNDH)**

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

The SCA expresses its concerns with the following:

1. The CNDH is dependent in law and practice on the Office of the Prime Minister. The SCA recalls that the Paris Principles prescribe that an NHRI should be able to exercise its mandate in an independent manner.
2. The legal texts of the CNDH do not provide details on the selection and appointment process. All the members are appointed by the Prime Minister and the Government is heavily represented in the composition of the membership. The SCA refers to General Observation 2.2 “Selection and appointment of the governing body”.
3. The representatives of the Government on the membership are granted voting rights. The SCA refers to General Observation 2.3 “Government representatives on National Institutions”.
4. None of the members of the CNDH functions on a full-time basis. The SCA refers to General Observation 2.8 “Full time Members”.

5. The CNDH does not have capacity to recruit its own staff and depends on the will of the Office of the Prime Minister for this purpose. The SCA refers to General Observation 2.7 “Staff of an NHRI”.

6. The Office of the Prime Minister provides the CNDH with resources and necessary services for the performance of the CNDH functions. The SCA refers to General Observation 2.6 “Adequate Funding”.

## 9. Specific recommendations – reviews under article 17 of the ICC statute

### 9.1. Greece: Greece National Commission for Human Rights (GNCHR)

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

The SCA expresses appreciation for the efforts undertaken by the GNCHR in advocating for ensuring adequate funding through provision of a separate budget line. While welcoming the developments achieved, the SCA stresses the importance of ensuring financial autonomy over the funds allocated to the GNCHR. The SCA refers to General Observation 2.6 “Adequate funding”, and requests the GNCHR to provide an update on developments on this matter at its first session of 2010.

### 9.2. Luxembourg: Commission Consultative des Droits de l’Homme of Luxembourg (CCDH)

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

The SCA acknowledges the efforts undertaken by the CCDH to ensure that the concerns it had expressed were addressed.

The SCA notes the following:

1. The dismissal process, as currently defined in the Law of 2008 conflicts with the Paris Principle of stable mandate of an institution and with General Observation 2.9 “Guarantee of tenure for members of governing bodies”.

2. The CCDH enabling law does not include provisions to ensure functional immunity of its members (i.e. protection from legal liability for actions undertaken in their official capacity of the NHRI). The SCA refers to General Observation 2.5 “Immunity”.

3. It is uncertain whether the budget allocations of the CCDH are such as to ensure, to a reasonable degree, the gradual and progressive realisation of the improvement of the organisation’s operations and the fulfilment of its mandate. The CCDH should be in a position to exercise autonomous/unfettered control over its budgetary allocation. The SCA refers to General Observation 2.6 “Adequate funding”.

The SCA will review the above mentioned matters at its second session of 2010, and encourages the CCDH to seek advice and assistance from OHCHR and the regional coordinating group of NHRIs (European Coordinating Committee).

### 9.3. Malaysia: National Human Rights Commission of Malaysia (SUHAKAM)

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

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

The SCA notes, in particular, improvements to the legislation that, amongst other things:

- Increases the term of office from two to three years
- Creates a selection committee that includes representation of members of civil society with knowledge of or experience in human rights
- Includes pluralism as an element in the selection of Commission members

The SCA notes, however, that these amendments may not, in practice, address all the concerns that were raised in previous sessions.

While the introduction of a selection committee has addressed in part the Paris Principles requirement for a clear, transparent and pluralist process for the selection of new members, the SCA notes that:

- The selection of civil society representatives on the committee is at the sole discretion of the Prime Minister; and
- Decisions of the selection committee are only recommendatory, since the Prime Minister is required to consult with, but is not bound to accept its decisions

The combination of these two factors leaves open the potential for political interference that may impact adversely on the transparency and participatory nature of the selection process. The SCA refers to Paris Principles B(1) and to its General Observations 2.1 “Ensuring pluralism” and 2.2 “Selection and Appointment of the Governing Body”.

The SCA also notes the proposal to develop Key Performance Indicators (KPIs) to be used in situations where a member is being considered for re-appointment, and in cases of dismissal. While acknowledging the value of such indicators in making clear the expectations placed on Commissioners, the SCA noted that the KPIs are yet to be adopted. It is therefore not in a position to assess whether the concerns expressed in the March 2009 session “*that the KPI’s must be clearly established; appropriately circumscribed, so as not to interfere in the independence of members; and made public*” have been addressed. In this regard the SCA again refers to its General Observation 2.9 “Guarantee of tenure for members of governing bodies”.

The SCA notes that both the new selection process and the KPI’s will be in effect for the selection of new or renewing members in April 2010. The SCA will therefore consider these issues at its second session in 2010.

#### **9.4. Nepal: National Human Rights Commission (NHRC)**

**Recommendation:** The SCA recommends that the consideration of the NHRC be deferred to its next session.

The SCA notes that there have been further delays in the drafting of the NHRC legislation, which has not been introduced into and adopted by the Parliament. The SCA is therefore not in a position to undertake a review at this time.

The SCA notes the ongoing drafting process and encourages the NHRC to engage with government to promote the development of legislation in full compliance with the Paris Principles.

The SCA also reiterates comments raised in earlier reviews regarding the promotion of the NHRC mandate in practice, notably:

1. It referred to General Observation 2.6 “Adequate funding”, in particular subparagraphs b) and c) and that financial systems should be such that the NHRI has complete financial autonomy.

2. It referred to General Observation 2.2 “Selection and appointment of the governing body”, in particular sub-paragraphs a), b) and d).

3. It encouraged the NHRI to strengthen its interaction with civil society organisations.

4. It referred to General Observation 1.4 “Interaction with the International Human Rights System”, in particular with regard to engagement with the United Nations Human Rights Treaty Bodies, the Human Rights Council and the ICC.

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

The SCA will consider all of the above issues at its first session in 2010.

## Annex IV

### International Coordinating Committee Subcommittee 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>3</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.

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

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

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

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

**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>4</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 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.*

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<sup>4</sup> Formerly Rule 3 (b) of the ICC Rules of Procedure.