

COMPILATION OF THE RULES AND WORKING METHODS OF THE SCA

1. Excerpt from the ICC Statute relevant to the accreditation process.....	pages 1-5
2. Rules of Procedure for the ICC Sub-Committee on Accreditation (SCA)	pages 6-8
3. SCA Working Methods (SCA reports: October 2007 – March 2009)	page 9
4. Guidelines for Accreditation Applications.....	pages 10-14
5. Template of the Statement of Compliance.....	pages 15-27
6. Annex 1: Paris Principles.....	pages 28-30
7. Annex 2: SCA General Observations.....	pages 31-83

1. Excerpt from the ICC Statute relevant to the accreditation process

Art 1.1 Sub-Committee on Accreditation means the sub-committee established under the former Rules of Procedure and referred to as the Accreditation Subcommittee of the International Coordinating Committee of National Institutions in United Nations Commission on Human Rights resolution 2005/74 as the authority to accredit NHRIs, under the auspices of the OHCHR, and whose mandate is given to it under and in accordance with the Rules of Procedure for the ICC Sub-Committee on Accreditation;

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Art 7 Functions

The functions of the ICC are:

2. To promote the establishment and strengthening of NHRIs in conformity with the Paris Principles, including such activities as:

- Accreditation of new members;
- Periodic renewal of accreditation;
- Special review of accreditation;
- Assistance of NHRIs under threat;
- Encouraging the provision of technical assistance;
- Fostering and promoting education and training opportunities to develop and reinforce the capacities of NHRIs.

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Art 10 Application for Accreditation Process

Any NHRI seeking accreditation under the Paris Principles shall apply to the Chairperson of the ICC. Through the ICC Secretariat, that NHRI shall supply the following in support of its application:

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

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

The application shall be decided pursuant to Articles 11 and 12 of this Statute.

Art 11.1 All applications for accreditation under the Paris Principles, shall be decided under the auspices of, and in cooperation with, OHCHR by the ICC Bureau after considering a report from the Sub-Committee on Accreditation on the basis of written evidence submitted.

Art 11.2 In coming to a decision, the ICC Bureau and the Sub-Committee shall adopt processes that facilitate dialogue and exchange of information between it and the applicant NHRI as deemed necessary to come to a fair and just decision.

Art 12 Where the Sub-Committee on Accreditation comes to an accreditation recommendation, it shall forward that recommendation to the ICC Bureau whose decision is final subject to the following process:

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

Art 13 Should the ICC Bureau decide to decline an application for accreditation of any NHRI by reason of its failure to comply with the Paris Principles, the ICC Bureau or its delegate may consult further with that institution concerning measures to address its compliance issues.

Art 14 Any NHRI whose application for accreditation has been declined may reapply for accreditation, according to the guidelines under Article 10, at any time. Such an application may be considered at the next meeting of the Sub Committee on Accreditation.

Art 15 Periodic Re-accreditation

All NHRIs that hold an 'A' status are subject to re-accreditation on a five year cyclical basis. Article 10 applies to NHRIs undergoing re-accreditation. In particular reference to an application for accreditation means both the initial application and the application for re-accreditation.

Art 16.1 Review of Accreditation Process

Where the circumstances of any NHRI change in any way which may affect its compliance with the Paris Principles, that NHRI shall notify the Chairperson of those changes and the Chairperson shall place the matter before the Sub-Committee on Accreditation for review of that NHRI's accreditation status.

Art 16.2 Where, in the opinion of the Chairperson of the ICC or of any member of the Sub-Committee on Accreditation, it appears that the circumstances of any NHRI that has been accredited with an 'A' status under the former Rules of Procedure may have changed in a way which affects its compliance with the Paris Principles, the Chairperson or the Sub-Committee may initiate a review of that NHRI's accreditation status.

Art 16.3 Any review of the accreditation classification of a NHRI must be finalized within eighteen (18) months.

Art 17 On any review the Chairperson and Sub-Committee on Accreditation shall have all the powers and responsibilities as in an application under Article 10.

Art 18.1 Alteration of Accreditation Classification

Any decision that would serve to remove accredited 'A' status from an applicant can only be taken after the applicant is informed of this intention and is given the opportunity to provide in writing, within one (1) year of receipt of such notice, the written evidence deemed necessary to establish its continued conformity to the Paris Principles.

Art 18.2 Authority to Immediately Suspend Accreditation in Exceptional Circumstances

Where, in the opinion of the ICC Chairperson, an exceptional circumstance exists necessitating the urgent suspension of an accredited 'A' status institution, the ICC Bureau may decide to immediately suspend the accreditation classification of that institution and initiate a special review, pursuant to Article 16.2.

Art 18.3 Process for immediate suspension of accreditation in exceptional circumstances

The decision of ICC Bureau in such exceptional circumstances is final and is subject to the following process:

- (i) The ICC Chairperson, through the ICC Secretariat, will immediately notify the ICC Bureau and the institution in question of the alleged existence of exceptional circumstance pursuant to Article 18.2 and the recommendation to suspend the accreditation classification of that institution;
- (ii) The institution can challenge the recommendation by submitting a written challenge to the ICC Bureau, through the ICC Secretariat, within 30 days of receipt;
- (iii) Any member of the ICC Bureau who disagrees with the recommendation to suspend the accreditation classification of the institution shall, within thirty days of receipt of the institution's challenge, notify the ICC Secretariat. The ICC Secretariat will promptly notify all ICC Bureau members of the objection and will

provide the necessary information to clarify that objection. If within twenty (20) days of receipt of at least two members of the ICC Bureau coming from not less than two regional groups notify the ICC Secretariat that they hold a similar objection, the recommendation shall be referred to the next ICC Bureau meeting for decision;

(iv) If no member of the ICC Bureau raises an objection to the recommendation, within thirty (30) days of the receipt of the institution's challenge, the decision to suspend the institution's status shall be deemed to be approved by the ICC Bureau.

**Art
18.4**

For the purposes of Article 18.2 and 18.3, an "exceptional circumstance" refers to a sudden and drastic change in internal political order of a State such as:

- breakdown in the constitutional or democratic order; or
- a declared state of emergency; or
- gross violations of human rights;

and this is accompanied by any of the following:

- there is a change in the NHRI enabling legislation or other applicable law that is contrary to the Paris Principles; or
- there is a change in the composition of the NHRI that is not undertaken in accordance with the established selection and/or appointment process; or
- the NHRI acts in a way that seriously compromises its compliance with Paris Principles.

Art 19 An accreditation classification held by a NHRI may be suspended if the NHRI fails to submit its application for re-accreditation or fails to do so within the prescribed time without justification.

Art 20 An accreditation classification may lapse if a NHRI fails to submit an application for re-accreditation within one (1) year of being suspended for failure to reapply, or if a NHRI under review under Article 16 of this Statute fails to provide sufficient documentation, within eighteen (18) months of being placed under review, to satisfy the body determining membership under this Statute that it remains in conformity with the Paris Principles.

Art 21 NHRIs whose accreditation has been suspended remain suspended until the body determining their compliance with the Paris Principles under this Statute comes to a determination of their accreditation status or until their accreditation lapses.

Art 22 NHRIs whose accreditation status has lapsed or been revoked may regain accreditation only by re-applying for accreditation as provided for in Article 10 of this Statute.

Art 23 In the event that accreditation lapses or is revoked or suspended, all rights and privileges conferred on that NHRI through accreditation immediately cease. In the event that a NHRI is under review, it shall retain the accreditation status it has been granted until such time as the body determining membership comes to a decision as to its compliance with the Paris Principles or its membership lapses.

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Art 46 Powers of the ICC Bureau

The ICC Bureau is empowered to act generally in the name of the ICC and to carry out the purpose and functions of the ICC. Without limiting the generality of the powers of management the ICC Bureau is empowered to:

- decide applications for accreditation after considering a recommendation from the Sub-Committee on Accreditation;
- (...)
- collaborate and work with the OHCHR and its NIU, and in particular to work with the NIU in connection with the ICC accreditation process, annual meetings of the ICC, meetings of the ICC Bureau and international conferences of NHRIs. In addition, the NIU will facilitate and coordinate the participation of NHRIs in the Human Rights Council, its mechanisms, and the United Nations human rights treaty bodies;
- use and accept the services of the NIU as the Secretariat for the ICC, the ICC Bureau and its Sub-Committee on Accreditation;
- (...)
- delegate any function to a nominated person, standing committee or subcommittee of persons or members;
- co-ordinate and arrange conferences, meetings, standing committees and sub-committees, and other activities;
- (...)
- adopt, amend or revoke rules of procedure in relation to the working methods of the ICC Bureau and its sub-committees to regulate or clarify any matter contemplated by this Statute. Every decision to adopt, amend or revoke a rule shall as soon as is practicable be circulated to all members of the ICC and posted on the nhri.net website.

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Art 50.1 Conduct of ICC Bureau Business

English, French, and Spanish shall be the working languages of the ICC Bureau. As a result, documents from the ICC should be available in these languages.

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Art 51 Further Procedure

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

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Art 59 SECTION 16: TRANSITIONAL PROVISION

The Sub-Committee on Accreditation and the Rules of Procedure for the ICC Sub-Committee on Accreditation are by this Statute continued in existence, and shall remain in existence until amended or revoked by the ICC Bureau. The Sub-Committee on Accreditation is hereby constituted a sub-committee of the ICC Bureau. The Rules of Procedure for the ICC Sub-Committee on Accreditation are incorporated into this Statute as **Annex I**.

EXECUTED BY: Ms. Jennifer Lynch, Q.C. 30 July 2008/ Amended at the General Meeting held at Nairobi, 21st October 2008 /Amended at the General Meeting held at Geneva, 24th March 2009/Amended at the General Meeting held at Geneva, 20th March 2012.

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

1. Mandate

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

2. Composition of the Sub-Committee

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

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

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

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

3. Functions

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

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

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

3.4. These applications and support documents shall be provided to the ICC Secretariat at least four (4) months prior to the meeting of the Sub-Committee. Subject to rule 3.5 of these Rules, an Institution undergoing re-accreditation that does not comply with this deadline will be suspended until such time as the required documentation is submitted and reviewed by the Sub-Committee.

3.5. Applications and documents submitted after this deadline will only be examined during the subsequent meeting of the Sub-Committee, unless the situation warrants otherwise, as determined by the ICC Chairperson. In the event that the delay involves an Institution seeking re-accreditation, a decision to not suspend the Institution can be taken

only if written justifications for the delay have been provided and these are, in the view of the ICC Chairperson, compelling and exceptional.

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

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

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

4. Procedures

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

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

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

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

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

5. Accreditation Classifications

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

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

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

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

6. Report and Recommendations

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

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

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

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

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

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

3. SCA Working Methods (SCA reports: October 2007 – March 2009)

At its twice-yearly sessions, the Sub-Committee continued to develop its working methods in the ongoing effort to advance the principles of rigour, transparency, and fairness in the accreditation process.

ICC Secretariat Summaries

1.1 The ICC Secretariat will, on behalf of the Sub-Committee, share the summaries prepared by the Secretariat with each NHRI before the consideration of its application and to give that NHRI one week to comment on the summary. All comments received, together with the summaries, are to be then sent to the members of the Sub-Committee. Once the recommendations of the Sub-Committee are adopted by the ICC according to the procedures, the summaries and the comments will be posted on the NHRI Forum (www.nhri.net).¹

1.2 The summaries are prepared only in English, due to current financial constraints.²

Civil Society Submissions

1.3 The Sub-Committee also considers information received from civil society. It shares that information with the concerned NHRIs and considers their responses.³

1.4 The Sub-Committee will consider only that information from civil society that is received by the ICC Secretariat at least four (4) months prior to the next session of the Sub-Committee.⁴

Conduct of Session

1.5 If further clarification is requested during its deliberations, the SCA will make conference calls with relevant NHRIs. Prior to the meeting all concerned NHRIs will be informed about this new way of seeking clarifications and are requested to provide a name and phone number in each NHRI in case the Sub-Committee needs to contact the Institution.⁵

1.6 OHCHR Desk Officers and, as appropriate, field offices are made available to the Sub-Committee members to introduce individual NHRIs considered by the Sub-Committee and provide further information, as needed.⁶

1.7 The Sub-Committee encourages the participation of all NHRI regional coordinating committees to attend the sessions as observers.⁷

Re-Accreditation of B status institutions

1.8 The Sub-Committee recommends that all NHRIs that hold B status be subject to re-accreditation on a 5 year cyclical basis.⁸

NHRIs under Review

1.9 When the Sub-Committee is to review particular issues within a specified timeframe, the outcome of the review may affect the accreditation status.⁹

¹ SCA Report, April 2008.

² SCA Report, April 2008.

³ SCA Report, April 2008.

⁴ SCA Report, November 2008.

⁵ SCA Report, October 2007; Section 4.5. Rules of Procedure.

⁶ SCA Report, October 2007; Section 4.5. Rules of Procedure.

⁷ SCA Report, November 2008.

⁸ SCA Report, March 2009.

⁹ SCA Report, October 2007.

4. Guidelines for Accreditation Applications (as updated June 2009)

1. Background

The United Nations High Commissioner for Human Rights has emphasised that National Human Rights Institutions (NHRIs) around the globe are essential partners in protecting and promoting human rights at the national and regional levels. In order to preserve this international recognition and trust, NHRIs must continue to be credible, legitimate, relevant and effective. This can be achieved by ensuring that the Paris Principles, the principal source of normative standards for NHRIs, guide the work of NHRIs. OHCHR and the International Coordinating Committee of NHRIs (ICC) work closely to ensure that NHRIs are established and strengthened in line with the Paris Principles.

The ICC is an international association of NHRIs which promotes and strengthens NHRIs to be in accordance with the Paris Principles and provides leadership in the promotion and protection of human rights (ICC Statute, Art 5)¹⁰. NHRIs may become a voting member of the ICC when they are assessed in compliance with the Paris Principles¹¹.

Reviewing NHRIs' compliance with the Paris Principles, through its accreditation and reaccreditation process (i.e. through the work of its Sub-committee on Accreditation), is one of the main functions of the ICC. In accordance with the Statute of the ICC, the Sub-Committee on Accreditation (the Sub-committee) has the mandate to consider and review applications for accreditation, re-accreditation and accreditation reviews of NHRIs on the basis of written evidence submitted¹². The ICC Bureau is vested with the power to decide applications for accreditation after considering the recommendation from the Sub-Committee on Accreditation (ICC Statute, Art 46).

The accreditation process has progressively become more rigorous and transparent, and now considers the effectiveness of NHRIs and their engagement with the international human rights system. The Sub-Committee assesses a NHRI's compliance with the Paris Principles in law and in practice. All applications for accreditation under the Paris Principles are decided under the auspices of, and in cooperation with, OHCHR.

The following sections explain what the accreditation process is and how it works, and includes recent developments as approved by the ICC.

2. How to make an application

New applicants seeking accreditation under the Paris Principles should apply to the Chairperson of the ICC, through the National Institutions and Regional Mechanisms Section of the OHCHR, in its capacity as ICC Secretariat (ICC Statute, Art 10). NHRIs due to be

¹⁰ Adopted on 30 July 2008, as amended on 21 October 2008, and further amended on 24 March 2009.

¹¹ Benefits of membership (i.e. full compliance with the Paris Principles, 'A status' accreditation) for NHRIs are a recognised standing in the international community (e.g. right to seat and speak in the Human Rights Council); a strengthened voice of NHRIs internationally; possibility to play an active role in ICC decision making and policy development; access to ICC services (e.g. fora to exchange good practices, develop knowledge, share expertise and network); access to cooperation on issues of common concern.

¹² ICC Statute, Art 1.1 defines the Sub-committee on Accreditation as 'the sub-committee established under the former Rules of Procedure and referred to as the Accreditation Subcommittee of the ICC in Human Rights Council resolution 2005/74 as the authority to accredit NHRIs, under the auspices of the OHCHR, and whose mandate is given to it under and in accordance with the Rules of Procedure for the ICC Sub-Committee on Accreditation'...

reviewed under the established re-accreditation process will be contacted by OHCHR in due time indicating a deadline for submission of a complete application for re-accreditation.

In accordance with Art 10 of the ICC Statute, applications for accreditation or reaccreditation must supply the following supporting documents:

- a copy of the legislation or other instrument by which it is established and empowered in its official or published format (e.g. statute, and/or constitutional provision, and/or presidential decree);
- an outline of its organizational structure including details of staff and annual budget;
- a copy of its most recent annual report or equivalent document in its official or published format;
- a detailed statement showing how it complies with the Paris Principles as well as any respects in which it does not so comply and any proposals to ensure compliance (following the template provided by OHCHR).

Where possible, applicants should provide documentation in its official or published form (for example, published laws and published annual reports) and not secondary analytical documents. For documents that are translated by the applicant NHRI for the Sub-Committee, the NHRI is requested to include the official letterhead of the institution with its logo on the translated document.

All the above mentioned documents must be received by OHCHR (in its capacity as the ICC Secretariat) four (4) months before the following Sub-Committee on Accreditation session¹³. NHRIs can submit information in one of the working languages of the ICC – English, French or Spanish but shall not be translated by the Secretariat¹⁴.

Documentation should be submitted in both hard copy and electronic format to the ICC Secretariat at OHCHR at the following address: National Institutions and Regional Mechanisms Section, OHCHR, CH-1211 Geneva 10, Switzerland, and by email to the National Institutions and Regional Mechanisms Section (vstefanov@ohchr.org; sshahidzadeh@ohchr.org; [NFellow3@ohchr.org](mailto:N Fellow3@ohchr.org) and nliza-doyen@ohchr.org).

3. Deadlines for submission of an application

Deadlines for complete submission of documents must be absolutely adhered to. The Sub-committee is very strict on supporting the Secretariat in this regard. At its 18th Session in 2006, the ICC agreed that late submission will not be considered until a subsequent meeting of the Sub-Committee. For NHRIs seeking re-accreditation, such a delay may result in a suspension of the NHRI's accreditation status¹⁵. At its 20th session in 2008 the ICC agreed that the deadline for the Secretariat to receive a complete application for each applicant NHRI is four (4) months before the scheduled Sub-committee session.

4. The application process

a) Before the Sub-Committee meeting

In addition to an initial application, the Sub-Committee may review an NHRI's compliance with the Paris Principles in the following circumstances. First, under Art 15 of the ICC Statute, NHRIs that hold an "A" Status are periodically reviewed every 5 years. Additionally, following the March 2009 session of the Sub-Committee on Accreditation, the ICC Bureau agreed that NHRIs holding "B" Status would also be subject to the 5-year review process.¹⁶

¹³ Sub-Committee on Accreditation Rules of Procedure, Rule 3.4

¹⁴ According to the Statute of the ICC (article 42), the working languages of the ICC are English, French and Spanish.

¹⁵ Sub-Committee on Accreditation Rules of Procedure, Rule 3.5

¹⁶ See, Report and Recommendations of the Session of the Sub-Committee on Accreditation (Geneva, 26-30 March 2009), at paragraph 2.6

Finally, under Art 16.2 of the ICC Statute, the Chair of the ICC or a member of the Sub-Committee on Accreditation may initiate an accreditation review of a particular NHRI when he/she perceives a change in the circumstances of any "A Status" NHRI which may affect its compliance with the Paris Principles.¹⁷

As noted above in section 2, applications and supporting documents are received and processed by the National Institutions and Regional Mechanisms Section of the United Nations Office of the High Commissioner for Human Rights (OHCHR) in its capacity as the ICC Secretariat.

Civil society organizations may also provide relevant information to OHCHR pertaining to any accreditation matter before the Sub-Committee. According to Rule 3.6 of the Sub-Committee's Rules of Procedure, those wishing to do so must provide such information in writing to OHCHR at least four (4) months prior to the meeting of the Sub-Committee.

OHCHR shares the complete file of the applicant NHRI with the four Sub-Committee members. It also reviews the supporting documentation provided and prepares a summary, which follows the structure of the statement of compliance provided by the NHRI. The summary is also shared with relevant OHCHR desk officers and United Nations field presences. During this process, OHCHR may contact the applicant NHRI to seek further information or clarification on issues arising. The summary is shared with the applicant NHRI to check for factual errors, one week prior to its distribution to the Sub-Committee members.

b) During the Sub-Committee meeting

The procedures adopted by the Sub-committee aim to facilitate dialogue and exchange of information between it and the applicant NHRI as deemed necessary to come to a fair and just decision. The summary and the statement of compliance are the basis for the discussions during the Sub-Committee meetings. The complete documentation file received is also available to Sub-Committee members during the meeting. During these deliberations, OHCHR desk officers are invited to participate and provide their views. The Sub-Committee requests contact persons within applicant NHRIs to be available by phone during the review as it may also call them to request additional information needed to evaluate the NHRI. Applicant NHRIs are not present during the meetings of the Sub-Committee.

The course of the meeting, the Sub-Committee agrees on a recommended accreditation status for each applicant NHRI. In accordance with Rule 5 of the ICC Sub-Committee on Accreditation Rules of Procedure, the different classifications for accreditation used by the Sub-Committee are:

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

c) After the Sub-Committee meeting

The process for approving the Sub-Committee's recommendations is set out in Art 12 of the ICC Statute. After the evaluation of an NHRI application, OHCHR sends the recommendation of the Sub-Committee first to relevant applicant NHRIs. These NHRIs have 28 days to react

¹⁷ Under Art 16.1 NHRIs are obliged to inform the Chairperson of any changes that may affect its compliance with the Paris Principles

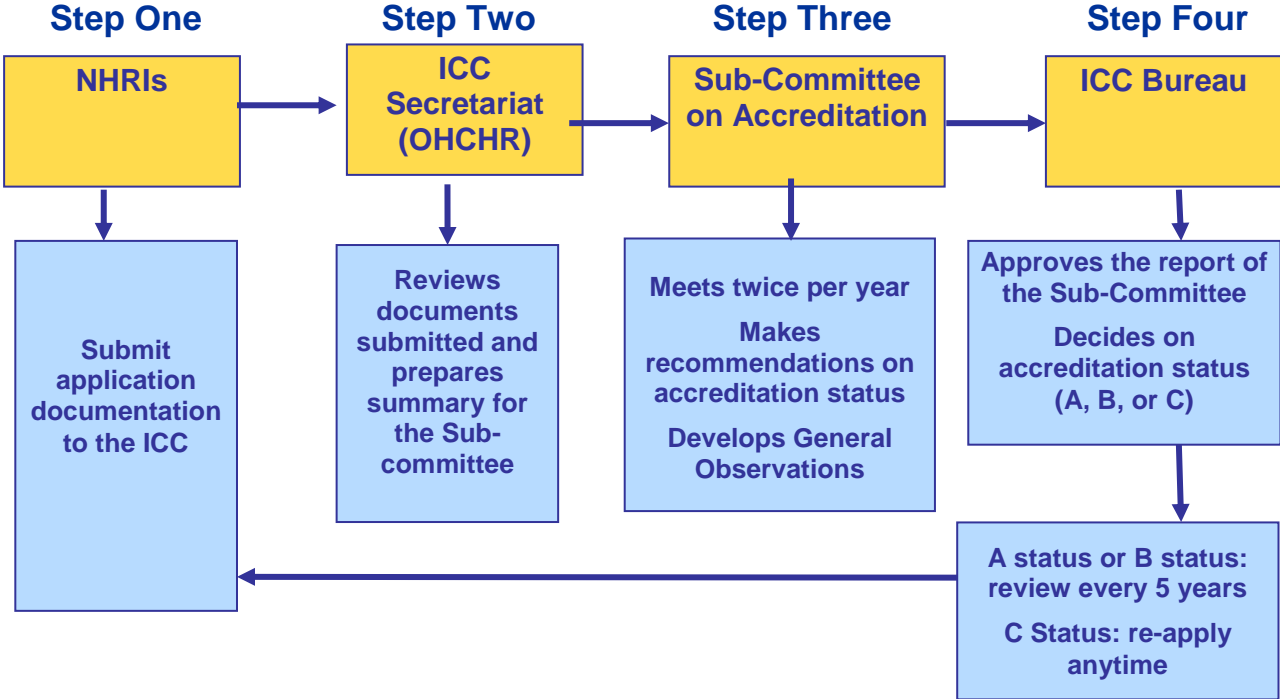
to the recommendation, if they so wish. Immediately after that 28-day period, OHCHR sends the Report and Recommendations of the Sub-Committee (and any response from the applicant NHRI) to the 16 members of the ICC Bureau. The Bureau members have twenty (20) days to approve or object to the recommendations.

Any member of the ICC Bureau who disagrees with the recommendation must notify the Chair of the Sub-Committee and the ICC Secretariat within these 20 days. The ICC Secretariat then notifies all other Bureau members and provides all information to clarify that objection. If 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 within twenty (20) days of receipt of this information, the recommendation shall be referred to the next ICC Bureau meeting for decision. If the required number of members does not raise any objection to the recommendation within the 20 day period, it will be deemed to be approved by the ICC Bureau.

d) Approval of Recommendations

The decision of the ICC Bureau on accreditation, based on the Sub-Committee’s review, is final. Unapproved decisions are referred for consideration at the next ICC meeting.

e) Diagram of the accreditation and re-accreditation process



5. General Observations of the ICC Sub-Committee on Accreditation

As per the Sub-Committee’s Rules of Procedure, the General Observations, are interpretive tools of the Paris Principles, may be used to:

- a) Instruct institutions when they are developing their own processes and mechanisms, to ensure Paris Principles compliance;
- b) Persuade domestic governments to address or remedy issues relating to an institution’s compliance with the standards articulated in the General Observations;
- c) Guide the Sub-Committee on Accreditation in its determination of new accreditation applications, re-accreditation applications or special reviews:

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

A compilation of the General Observations adopted by the ICC is attached in annex 1.

Applicant NHRIs are also encouraged to refer to the latest ICC Sub-Committee reports available in www.nhri.net to find that latest General Observations developed by the Sub-Committee and pending adoption by the ICC.

5. Template of the Statement of Compliance

The following document should be completed by the applicant NHRI as part of the accreditation application. It should be completed using references to primary sources (e.g. constitution, law, decree, reports) in order to provide the Sub-Committee with essential background information on the NHRI. It is essential that the NHRI substantiate each statement made by reference to its enabling instrument(s) or official reports. Applicants are kindly requested to clearly indicate articles and sections of primary sources they refer to (i.e. article, paragraph, and page).

STATEMENT OF COMPLIANCE WITH THE PARIS PRINCIPLES OF THE [NAME OF NHRI] - [Date] -

CHARACTER OF THE NHRI

1. ESTABLISHMENT

The Paris Principles state that an institution's mandate shall be clearly set forth in a constitutional or legislative text (...).

The ICC has adopted the following General Observation on the Establishment of NHRIs: "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"

Discuss the instruments that establish the NHRI. Please explain:

- When and by what enabling law the NHRI was established;
- The legal status of the NHRI, i.e. whether it has been established by legislation or if it is entrenched in the Constitution;
- If there is any other mechanism that gives the NHRI its legitimacy;
- The geographic jurisdiction of the NHRI.

2. INDEPENDENCE

Independence is a fundamental pillar of the Paris Principles. All the provisions in the section "Composition and guarantees of independence and pluralism" aim to ensure independence through composition, representation, infrastructure, stable mandate of the NHRI.

*The ICC has adopted the following General Observation on the **administrative regulation** of NHRIs: "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".*

To preserve the independence of members, the ICC has strongly recommended that "provisions be included in national law to protect legal liability for actions undertaken in the official capacity of the NHRI".

Discuss the mechanisms that guarantee the independence of the NHRI. Please explain:

- The nature of the Institution's accountability (i.e. whether the NHRI is accountable to parliament, a ministry, government department, head of state, etc.);
- Whether or not the NHRI receives instruction from the government;
- By what means conflicts of interest are avoided;
- Whether or not members incur legal liability for actions taken in their official capacity.

3. COMPOSITION, APPOINTMENT PROCESS, TENURE

3.1 Composition

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

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

(b) Trends in philosophical or religious thought;

(c) Universities and qualified experts;

(d) Parliament;

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

The ICC has adopted the following General Observations on the composition and pluralism of NHRIs:

• ***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 emphasises 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:

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

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

• ***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.

Discuss how your NHRI meets the requirement of pluralism. Please explain:

- Whether your founding law requires a diverse composition of members¹⁸;
- Which authority/group may nominate candidates for membership;
- The composition of the NHRI's membership, i.e. what positions are created by the enacting law and what positions are currently filled and are in operation (Please include heads and deputy heads of the organization);
- How the groups mentioned at the letters a-e as above are represented;
- Representation of women;
- Representation of ethnic or minority groups (e.g. indigenous, religious minorities, etc);
- Representation of particular groups (e.g. people with a disability, etc);

3.2 Selection and appointment

*The ICC has adopted the following **General Observations on selection and appointment**:*

- **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 emphasises the following factors:*
 1. *A transparent process*
 2. *Broad consultation throughout the selection and appointment process*
 3. *Advertising vacancies broadly*
 4. *Maximising the number of potential candidates from a wide range of societal groups*
 5. *Selecting members to serve in their own individual capacity rather than on behalf of the organization they represent.*

Discuss how members of the NHRI are selected and appointed. Please explain:

- The legal provisions (in your founding law or elsewhere) regarding the selection and appointment of members to the NHRI;
- The selection process and appointment procedure in practice (please indicate how publicity, transparency, broad consultation, openness to different groups of societies are enshrined in the enabling legislation and operate in practice);
- Whether and how these procedures ensure adequate representation of civil forces (e.g. civil society) involved in the promotion and protection of human rights
- Cooperation with the representatives of the groups mentioned above in 3.1;
- Membership criteria;

3.3. Tenure

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

*The ICC has adopted the following **General Observations on membership tenure**:*

- **Full-time Members:** *Members of the NHRIs should include full-time remunerated members to:*
 1. *Ensure the independence of the NHRI free from actual or perceived conflict of interests;*

¹⁸ Members refers to those individuals that are appointed or elected under the NHRI's founding law (i.e. Chair, Commissioners, Ombudsmen, Deputy Ombudsmen) and with whom the NHRIs functions are vested.

2. Ensure a stable mandate for the members;
3. Ensure the ongoing and effective fulfilment of the mandate of the NHRI.

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

Discuss how the tenure of the NHRIs' members is ensured. Please explain:

- The terms of office of members (and if it is specified in the founding law);
- Whether members are full and/or part-time;
- Whether the members receive adequate remuneration;
- Whether the members' terms are renewable;
- The grounds and procedures for dismissal and/or resignation of a member and how they operate in practice;
- If there is an advisory body in addition to the members, and if so, please set out the membership requirements of this body.

4. **ORGANIZATIONAL INFRASTRUCTURE**

4.1 **Infrastructure**

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

Discuss the NHRI's infrastructure.

Please explain:

- The organisational structure of the NHRI;
- How the NHRI's infrastructure (including staff and resources) is allocated;
- How the NHRI's infrastructure allows it to function according to its mandate;
- Evidence that the NHRI is adequately resourced and staffed.

Please provide:

- An organizational chart of the NHRI's structure.

4.2 **Staffing**

The Paris Principles state that the NHRIs should be able to have its own staff.

The ICC has adopted the following General Observation on staffing:

- **Staff of an NHRI:** As a principle, NHRIs should be empowered to appoint their own staff.
- **Staffing by secondment:** In order to guarantee the independence of the NHRI, the Sub Committee notes, as a matter of good practice, the following:
 1. Senior level posts should not be filled with secondees;
 2. The number of seconded should not exceed 25% and never be more than 50% of the total workforce of the NHRI.

Discuss the NHRI's staffing. Please explain:

- How staff of the NHRI are hired;
- If there are any limitations on the NHRI's authority to hire staff;
- Which current positions (if any) are filled by secondees;
- What percentage of the staff (including senior position) is seconded;
- Whether and how the staff reflects the principle of pluralism.

Please provide:

- A list of the staff of the NHRI or, if provided in another document, refer to the organisational chart illustrating the staffing structure of the NHRI (please indicate gender distribution).

4.3 Premises (accessibility)

The Paris Principles state that the NHRIs should be able to have its own (...) premises and that, within the framework of its operation, the national institution shall (...) set up local or regional sections to assist it in discharging its functions.

Discuss the NHRI's premises. Please explain:

- The presentation of the main premises of your organization;
- Whether the NHRI has local or regional offices;
- If so, how local and regional offices communicate with the main office;
- How the public can access the NHRI's offices;
- Whether the NHRI's offices are accessible to people with disabilities;

Please also describe procedures and mechanisms of the NHRI to ensure accessibility to the broader population and in particular, to people who are exposed to human rights violations or non-fulfilment of their rights, i.e. women, ethnic, linguistic, religious or other minorities, non-nationals and persons with disability, as well as the poor.

4.4 Budget

The Paris Principles state that the national institution shall have an (...) adequate funding (...) and not be subject to financial control which might affect its independence.

*The ICC has adopted the following General Observation on **Adequate Funding**: Provision of adequate funding by the state should, as a minimum include:*

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

Adequate funding should, to a reasonable degree, ensure the gradual and progressive realization of the improvement of the organization's operations and the fulfillment of their mandate. Funding from external sources, such as from development partners, should not compose the core funding of the NHRI as it is the responsibility of the state to ensure the NHRI's minimum activity budget in order to allow it to operate towards fulfilling its mandate. Financial systems should be such that the NHRI has complete financial autonomy. This should be a separate budget line over which it has absolute management and control.

Discuss the NHRI's budget. Please explain:

- How the NHRI's budget is developed, submitted and approved (e.g. if it is drafted by the NHRI, presented directly to parliament or through a government ministry or other body, the influence of that body);

- Whether or not the NHRI has control over the management and expenditure of its allocated budget (i.e. if the NHRI is financially independent from the government in how its budget is spent).
- Whether -and what percentage of- the NHRI budget is donor funded.

Please provide:

- information relating to the budget of the NHRI, its accounts and financial records;

5. **WORKING METHODS**

Please indicate whether your organization has adopted internal regulations and/or an annual/strategic plan. Briefly describe its main elements.

5.1 Regular meetings

The Paris Principles state that within the framework of its operation, the national institution shall meet on a regular basis and whenever necessary in the presence of all its members after they have been duly convened.

Discuss how the meetings of the NHRI's members operate. Please explain:

- The frequency and composition of the NHRI meetings in practice (at the senior and staff level).

5.2 Working groups

The Paris Principles state that within the framework of its operation, the national institution shall establish working groups from among its members as necessary.

Discuss the NHRI's working groups (if any). Please explain:

- Whether the NHRI has established any working groups;
- If so, what are the mandate, composition and working methods of these groups.

GENERAL MANDATE

6. **GENERAL COMPETENCE AND RESPONSIBILITIES**

For each of the functions described in the following sections, please discuss:

- the relevant provisions in the NHRI's founding law,
- the powers the NHRI is vested with (e.g. if it can act on its own initiative), and
- concrete examples of how the NHRI fulfils the function in practice.

6.1 Mandate to promote and protect human rights

The Paris Principles state that a national institution shall be vested with competence to promote and protect human rights. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text (....). Within the framework of its operation, the national institution shall freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petition.

*The ICC has adopted the following General Observation on **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.*

Discuss the broad legal mandate of the NHRI. Please explain:

- How human rights are defined in the NHRI's founding law;
- Which rights the NHRI is mandated to address: e.g. civil, political, social, economic and cultural;
- If the institutions' mandate refers to any limitation in the mandate or jurisdiction (e.g. rights or areas of the countries that are excluded);
- Broadly, how the NHRI is able to exercise its mandate in practice.

6.2 Advisory Functions

The Paris Principles state that a national institution shall, inter alia, have the responsibility to submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights (...).

Discuss the legal provisions for this function and how the NHRI carries out this responsibility in relation to the following functions:

6.2.1 Functions regarding national legislation

The Paris Principles state that a national institution shall have the responsibility to promote and ensure the harmonization of national legislation regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation.

It is also stated that a NHRI shall have responsibilities in relation to any of the following areas:

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

Discuss how the NHRI carries out this function. Please explain:

- The legal provisions that vest the NHRI with this function;
- How the NHRI carries out this function in practice;
- What recommendations the NHRI has made on legislative and administrative provisions; amendment of legislation and bills, etc.;
- What advocacy the NHRI has undertaken to harmonize national laws and practices to international standards and/or to implement recommendation of international human rights system).

6.2.2 Encouraging ratification and implementation of international standards

The Paris Principles state that a national institution shall have the responsibility to encourage ratification of international human rights instruments to which the State is a party, and to ensure their effective implementation.

The ICC has adopted the following General Observations on NHRIs' 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.

Discuss how the NHRI carries out this function. Please explain:

- The legal provisions that vest the NHRI with this function;
- How the NHRI carries out this function in practice;
- Examples of advocacy or awareness raising campaigns the NHRI has undertaken to encourage ratification or accession to international instruments.

6.3 Monitoring functions

The Paris Principles state that a NHRI shall have responsibilities in relation to (...) any situation of violation of human rights which it decides to take up; and (...) on drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government.

Discuss how the NHRI carries out this function. Please explain:

- The legal provisions that vest the NHRI with this function;
- How the NHRI carries out this function in practice;
- How the NHRI is active in monitoring domestic human rights situations (e.g. decision-making bodies, courts, government agencies), including visiting places of deprivation of liberty, etc.
- Whether the Institution monitors government compliance with its advice and recommendations.

6.3.1 Investigation

The Paris Principles state that within the framework of its operation, the national institution shall: hear any person and obtain any information and any documents necessary for assessing situations falling within its competence.

Please complete this section if the NHRI does not have quasi-judicial competence as set out in section 7 below.

Discuss how the NHRI carries out this function. Please explain:

- The legal provisions that vest the NHRI with this function;
- Whether individuals, government, public bodies etc are obliged to provide the NHRI with requested documentation;
- How the NHRI carries out this function in practice (e.g. in the conduct of public inquiries).

6.3.2 Reporting

The Paris Principles state that a NHRI shall have responsibilities in relation to (...) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters.

The ICC has adopted the following General Observations on:

- **Annual Report:** *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.*

• 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.*

Discuss how the NHRI carries out this function. Please explain:

- The legal provisions that vest the NHRI with this function;
- How the NHRI carries out this function in practice;
- How annual and thematic reports are delivered (e.g. publicity, distribution, and languages available; authorities to which it is submitted);
- Whether relevant parties (individuals, government, public bodies etc) are obliged to formally respond to the recommendations and reports of the NHRI;
- How the NHRI follows up with authorities on its recommendations.

6.4 Promotional Functions

6.4.1 By raising awareness on human rights norms and issues

The Paris Principles state that a national institution shall have the responsibility to publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.

Discuss how the NHRI carries out this function. Please explain:

- The legal provisions that vest the NHRI with this function;
- How the NHRI carries out this public education function in practice;
- Whether it makes publications or services available in several languages and if it makes interpretation available;
- What public awareness campaigns the NHRI has undertaken in relation to combating racism.

6.4.2 Through programmes for teaching and research

The Paris Principles state that a national institution shall have the responsibility to assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles.

Discuss how the NHRI carries out this function. Please explain:

- The legal provisions that vest the NHRI with this function;
- How the NHRI carries out this education function in practice;
- Examples of the NHRI's initiatives in such programmes in schools, universities and professional groups.

6.4.3 By addressing public opinion

The Paris Principles state that within the framework of its operation, the national institution shall address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations.

Discuss how the NHRI carries out this function. Please explain:

- The legal provisions that vest the NHRI with this function;

- How the NHRI carries out this public education function in practice;
- What policies and strategies the NHRI has to engage with the media.

7. QUASI-JURISDICTIONAL FUNCTIONS (optional, only for those NHRIs having quasi-judicial powers)

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

(a) Seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality;

(b) Informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them;

(c) Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;

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

Discuss how the NHRI carries out this function. Please explain:

- The legal provisions that vest the NHRI with this function;
- How the NHRI carries out this complaints handling function in practice (i.e. an overview of the mechanisms and procedures adopted to receive, investigate, and handle complaints received).

Please provide an account of complaints-handling statistics (e.g. number and typology of complaints received and processed; resolved; dismissed; referred).

8. RELATIONSHIP WITH RELEVANT HUMAN RIGHTS STAKEHOLDERS AND OTHER BODIES

8.1 Relationships with Civil Society

The Paris Principles state that within the framework of its operation, the national institution shall, in view of the fundamental role played by the non-governmental organizations in expanding the work of the national institutions, develop relations with the non-governmental organizations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.

Discuss how the NHRI carries out this responsibility. Please explain:

- Whether the provisions in the NHRI's founding law formalises relationships between the NHRI and civil society;
- How the NHRI has developed relationships with NGOs in practice;
- Which civil society groups the NHRI cooperates with (i.e. NGOs, trade unions, professional organisations, individuals or organisations espousing trends in philosophical

or religious thought, universities and qualified experts, parliament and government departments);

- How frequent and what type of interaction the NHRI has with NGOs (e.g. workshops, meetings, joint projects, through complaints handling).

8.2 Relationship with other with other bodies

The Paris Principles state that within the framework of its operation, the national institution shall maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular ombudsmen, mediators and similar institutions).

*The ICC has adopted the following General Observations on **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.*

Discuss how the NHRI carries out this responsibility. Please explain:

- Whether the provisions in the NHRI's founding law formalise relationships between the NHRI and other bodies with human rights responsibilities;
- How the NHRI has developed relationships with these bodies in practice;
- Which bodies the NHRI cooperates with (i.e. governmental agencies, the justice system, the parliament, any human rights committees, or any other bodies that might affect the human rights situation in the country);
- How frequent and what type of interaction the NHRI has with such bodies (e.g. training, consultations, meetings, joint projects, through complaints handling)
- The NHRI's relationship with other human rights institutions at the national level (e.g. specialised human rights institutions, ombudsmen) (OPTIONAL: only for NHRIs operating in countries where such bodies have been established).

8.3 Cooperation with the United Nations and other organizations

The Paris Principles state that a national institution shall have the responsibility to cooperate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the promotion and protection of human rights. It is important 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 providing input to, and 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.

*The ICC has adopted the following General Observations on the **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.*

Discuss how the NHRI carries out this function. Please explain:

- The legal provisions that vest the NHRI with this function;
- How the NHRI carries out this function in practice;
- Which UN mechanisms the NHRI has engaged with (e.g. Human rights Council, UPR, Treaty Bodies, Special procedures mandate holders, Commission on the Status of Women, etc)
- Which regional mechanisms the NHRI has engaged with (e.g. regional human rights commissions, courts, etc);
- The type of interaction the NHRI has had with these bodies (e.g. sending information, parallel reports, amicus curiae briefings; attending the meetings; acting as an implementing partner etc)
- How your NHRI has followed up at the national level to the recommendations resulting from these bodies, etc.);
- Which UN agencies the NHRI has engaged with (e.g. OHCHR regional or field offices, UNDP, UNCHR, human rights components of UN peacekeeping missions, etc);
- The type of interaction the NHRI has had with these bodies (e.g. sharing information, undertaking joint activities, acting as an implementing partner etc).

SPECIFIC MANDATE (OPTIONAL)

*****only for those NHRIs which have been formally designated as NPM, by States that have ratified OPCAT*****

9. NATIONAL PREVENTIVE MECHANISM UNDER OPCAT

Under OPCAT: "Each State Party shall maintain, designate or establish, at the latest one year after the entry into force of the present Protocol or of its ratification or accession, one or several independent national preventive mechanisms for the prevention of torture at the domestic level. Mechanisms established by decentralized units may be designated as national preventive mechanisms for the purposes of the present Protocol if they are in conformity with its provisions (Art. 17). NPMs will be allowed to visit any place under the State jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence (hereinafter referred to as places of detention)). These visits shall be undertaken with a view to strengthening, if necessary, the protection of these persons against torture and other cruel, inhuman or degrading treatment or punishment (art.4). The States Parties shall guarantee the functional independence of the national preventive mechanisms as well as the independence of their personnel. (2) The States Parties shall take the necessary measures to ensure that the experts of the national preventive mechanism have the required capabilities and professional knowledge. They shall strive for a gender balance and the adequate representation of ethnic and minority groups in the country. (3) The States Parties undertake to make available the necessary resources for the functioning of the national preventive mechanisms. (4) When establishing national preventive mechanisms, States Parties shall give due consideration to the Principles relating to the status of national institutions for the promotion and protection of human rights Article 18: (1). For more information please refer to art. 19-23 and 35 of OPCAT.

Please discuss how the NHRI carries out its function. Please explain¹⁹:

1. Are the mandate and powers of the NPM clearly and specifically established in national legislation as a constitutional or legislative text?
2. How "places of deprivation of liberty" visited by the NPM are defined? Is this definition in line with the OPCAT requirements?
3. Is the NPM established by a public, inclusive and transparent process?
4. Does it include civil society and other actors involved in the prevention of torture?
5. Has the designation of the NHRI as the NPM be open for debate, involving civil society?
6. How the independence of the NPM is fostered?
7. What is the process of selection and appointment of members?
8. Are ways to avoid questions of conflict of interest in place?
9. Are there stated criteria relating to the experience and expertise required to carry out NPM work effectively and impartially?
10. Is the NPM gender-balanced?
11. Does the NPM have adequate representation of ethnic, minority and indigenous groups?
12. Has the State taken the necessary measures to ensure that the expert members of the national preventive mechanism have the required capabilities and professional knowledge?
13. Have ad-hoc training been provided to the NPM?
14. Have adequate resources been provided for the specific work of the NPM (in accordance with article 18, 3 of the OPCAT)? Are they ring-fenced, in terms of both budget and human resources?
15. Does the work programme of the NPM cover all potential and actual places of deprivation of liberty?
16. Does the scheduling of the NPM visits ensure effective monitoring of such places with regard to safeguards against ill-treatment?
17. Have working methods of the NPM been developed? Have they ever been reviewed with a view to effective identification of good practice and gaps in protection?
18. Does the NPM report on visits with feedback on good practice and gaps in protection to the institutions concerned?
19. Does the NPM address recommendations to the responsible authorities on improvements in practice, policy and law?
20. Has the NPM established an ongoing dialogue with authorities based on the recommendations for changes arising from the visits and the action taken to respond to such recommendations (as per article 22 of the OPCAT)?
21. Does the NPM publish its annual report (as per article 23 of the OPCAT)?
22. Does the NPM communicate with the international human rights system and, in particular, with the Sub-committee on Prevention?

¹⁹ Questions in this section are mainly based on the guidelines for the ongoing development of NPM published in the first annual report of the Subcommittee on Prevention of Torture and other cruel, inhuman or degrading treatment or punishment (February 2007- March 2008), pages 28-29.

6. Annex 1: Paris Principles

Principles relating to the status of national institutions

Competence and responsibilities*

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

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

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

Composition and guarantees of independence and pluralism

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

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

(b) Trends in philosophical or religious thought;

(c) Universities and qualified experts;

(d) Parliament;

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

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

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

Methods of operation

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

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

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

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

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

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

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

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

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

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

(a) Seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality;

(b) Informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them;

(c) Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;

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

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

* * *

7. Annex 2: SCA General Observations (as updated May 2013)

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

General Observations of the Sub-Committee on Accreditation

Introduction

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

- b) Persuade domestic governments to address or remedy issues relating to an institution's compliance with the standards articulated in the General Observations;
 - c) Guide the SCA in its determination of new accreditation applications, re-accreditation applications or other review:
 - i. If an institution falls substantially short of the standards articulated in the General Observations, it will be open for the SCA to find that it was not Paris Principle compliant.
 - ii. If the SCA has noted concern about an institution's compliance with any of the General Observations, it may consider what steps, if any, have been taken by an institution to address those concerns in future applications. If the SCA is not provided with proof of efforts to address the General Observations previously made, or offered a reasonable explanation why no efforts had been made, it would be open to the SCA to interpret such lack of progress as non-compliance with the Paris Principles.
7. The SCA is aware of the different National Institution structural models in existence, including: commissions; ombudsman institutes; hybrid institutions; consultative and advisory bodies; research institutes and centres; civil rights protectors; public defenders; and parliamentary advocates. (For a more complete discussion of the different model-types, the SCA refers to *Professional Training Series No.4: National Human Rights Institutions: History, Principles, Roles and Responsibilities*, United Nations Office of the High Commissioner for Human Rights, New York and Geneva, 2010, pp. 15-19). The SCA is of the view that its General Observations must be applied to every National Institution, regardless of its structural model type.
 8. The citation of General Observations is done in tandem with the issuance of specific recommendations on individual accreditation applications, the latter of which are narrow in application and value to the National Institution concerned. Inversely, the General Observations, being independent of a specific set of facts pertaining to a single domestic context, are universal in their application and provide guidance in both individual cases and more generally.
 9. The categorization of the General Observations into the following two sections clarifies for all stakeholders which of the General Observations are direct interpretations of the Paris Principles, and which are drawn from the SCA's extensive experience in identifying proven practices to ensure independent and effective National Institutions in line with the Paris Principles:
 - i. Essential requirements of the Paris Principles; and
 - ii. Practices that directly promote Paris Principles compliance.
 10. As it gains further experience, the SCA will seek to develop new General Observations. In 2011, the ICC adopted a formalized multi-stage process for doing so. This procedure was designed to promote their accessibility by ensuring consistency in their content and format; being clearly written, of reasonable length and readily understandable to a broad range of readers, primarily National Institutions and States.
 11. The first stage consists of a discussion amongst SCA members, representatives of the ICC Regional Coordinating Committees (RCCs), and OHCHR on the topic of the General Observation. Secondly, a Working Group is established. It canvasses ICC members, through the RCCs, for their views on the topic to be addressed. Thirdly,

the Working Group, taking into account any comments received from the ICC membership, develops a draft and presents it to the SCA for review and comment. Lastly, once approved, the SCA will recommend the revised draft be formally adopted through its sessional reports to the ICC Bureau.

12. The SCA's work in developing a comprehensive and detailed interpretation of the Paris Principles is of widespread value as it serves to enrich the understanding of the requirements to ensure the effective establishment, functioning and strengthening of National Institutions. Ultimately a synthesis of the most important issues of interpretation that have been uncovered by the individual accreditation applications, the General Observations are relevant to National Institutions globally, including those not currently the subject of the immediate accreditation review. The General Observations further enable stakeholders to take a proactive approach to effect the necessary changes to their own processes and mechanisms without requiring the SCA to provide them with specific recommendations resulting from the outcome of an accreditation review.
13. National Institutions are reliant upon their national government to implement many of the provisions of the Principles, including their legislative establishment and provision of adequate funding. Where the SCA notes as an issue of concern, the failure of the State to fulfill its obligations pursuant to the Paris Principles, the National Institution may use the standards articulated in the General Observations to recommend the action required by the State to effect the necessary change to address or remedy issues before the accreditation status of the National Institution is next reviewed.
14. The General Observations have also been developed to preserve the institutional memory of the SCA and to ensure a consistency in approach taken by its rotational membership.
15. The appropriate implementation of General Observations is key to advancing National Institution maturity. By clarifying the requirements of the Paris Principles, the General Observations provide National Institutions with accessible, relevant and readily contextualized norms to speed their evolution into more efficient and effective institutions, resulting in the enhanced promotion and protection of human rights on the ground.

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

GENERAL OBSERVATIONS

1. Essential requirements of the Paris Principles

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

2. Practices that directly promote Paris Principles compliance

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

6. Procedural issues

- 6.1 Application processes

- 6.2 Deferral of re-accreditation applications
- 6.3 NHRIs under review
- 6.4 Suspension of accreditation
- 6.5 Submission of information
- 6.6 More than one national institution in a State
- 6.7 Assessing the Performance of National Human Rights Institutions

1. Essential requirements of the Paris Principles

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

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

JUSTIFICATION

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

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

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

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

Excerpt from the Paris Principles

A) Competence and responsibilities –

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

1. Essential requirements of the Paris Principles

G.O. 1.2 Human rights mandate

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

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

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

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

JUSTIFICATION

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

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

Excerpt from the Paris Principles

A. Competence and responsibilities –

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

institutions of other countries that are competent in the areas of the promotion and protection of human rights;

- (f) To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;*
- (g) To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.*

1. Essential requirements of the Paris Principles

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

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

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

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

JUSTIFICATION

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

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

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

Excerpt from the Paris Principles

A) Competence and responsibilities –

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

....

- (b) *To promote and ensure the harmonization of national legislation regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;*
- (c) *To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;*

1. Essential requirements of the Paris Principles

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

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

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

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

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

JUSTIFICATION

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

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

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

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

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

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

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

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

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

Excerpt from the Paris Principles

A) Competence and responsibilities –

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

....

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

1. Essential requirements of the Paris Principles

G.O. 1.5 Cooperation with other human rights bodies

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

JUSTIFICATION

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

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

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

- *National human rights framework* – The effectiveness of a NHRI in implementing its mandate to protect and promote human rights is largely dependent upon the quality of its working relationships with other national democratic institutions such as: government departments; judicial bodies; lawyers' organizations; non-governmental organizations; the media; and other civil society associations. Broad engagement with all stakeholders may provide a better understanding of: the breadth of human rights issues across the state; the impact of such issues based on social cultural, geographic and other factors; gaps, as well as potential overlap and duplication in the setting of policy, priorities and implementation strategies. NHRIs working in isolation may be limited in their ability to provide adequate human rights protections to the public.
- *Unique position of NHRIs* – The character and identity of a NHRI serves to distinguish it from both government bodies and civil society. As independent, pluralistic institutions, NHRIs can play an important role.
- *Improved accessibility* – The NHRI's relations with civil society and NGOs is particularly important in improving its accessibility to sections of the populations who are geographically, politically or socially remote. These organizations are likely to have closer relations with vulnerable groups as they often have a more extensive network than NHRIs and are almost always likely to be closer to the ground. In this

way, NHRIs may utilize civil society to provide an outreach mechanism to engage with vulnerable groups.

- *Expertise of other human rights bodies* – As a result of their specialized mandates, other human rights bodies and civil society groups may provide a NHRI with valuable advice on the major human rights issues facing vulnerable groups across the nation. As such, NHRIs are encouraged to regularly consult with other human rights bodies and civil society at all stages of programme planning and implementation, as well as policy making, to ensure the NHRI’s activities reflect public concerns and priorities. Developing effective relationships with the mass media, as a section of civil society, is a particularly important tool for human rights education.
- *Formalized relationships* – The importance of formalizing clear and workable relationships with other human rights bodies and civil society, such as through public memoranda of understanding, serves as a reflection of the importance of ensuring regular, constructive working relationships and is key to increasing the transparency of the NHRI’s work with these bodies.

Excerpt from the Paris Principles

C) Methods of operation –

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

...

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

1. Essential requirements of the Paris Principles

G.O. 1.6 Recommendations by National Human Rights Institutions

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

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

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

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

JUSTIFICATION

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

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

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

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

The Sub-Committee is of the view that the three-fold reinforcement of the obligation to make and publicize recommendations is indicative that the drafters of the Paris Principles considered that NHRIs would be more effective when provided with the authority to monitor the extent to which public authorities follow their advice and recommendations. To give full effect to this principle, the Sub-Committee encourages governments to respond to advice

and requests from National Institutions, and to indicate, within a reasonable time, how they have complied with their recommendations.

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

Excerpt from the Paris Principles

A) Competence and responsibilities –

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

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

C) Methods of operation –

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

...

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

...

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

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

...

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

1. Essential requirements of the Paris Principles

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

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

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

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

a) Members of the decision-making body represent different segments of society as referred to in the Paris Principles. Criteria for membership of the decision-making body should be legislatively established, be made publicly available and subject to consultation with all stakeholders, including civil society. Criteria that may unduly narrow and restrict the diversity and plurality of the composition of the National Institution's membership should be avoided;

b) Pluralism through the appointment procedures of the governing body of the National Institutions, for example, where diverse societal groups suggest or recommend candidates;

c) Pluralism through procedures enabling effective cooperation with diverse societal groups, for example advisory committees, networks, consultations or public forums; or

d) Pluralism through staff that are representative of the diverse segments of society. This is particularly relevant for single member Institutions, such as an Ombudsperson.

JUSTIFICATION

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

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

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

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

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

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

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

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

Excerpt from the Paris Principles

B) Composition and guarantees of independence and pluralism –

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

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

1. Essential requirements of the Paris Principles

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

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

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

JUSTIFICATION

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

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

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

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

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

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

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

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

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

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

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

Excerpt from the Paris Principles

B) Composition and guarantees of independence and pluralism –

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

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

1. Essential requirements of the Paris Principles

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

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

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

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

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

JUSTIFICATION

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

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

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

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

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

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

The SCA notes that Paris Principle B.1 specifically states that representatives of government agencies have only an advisory role, while no such restriction is explicitly stated in relation to representatives of parliament. It notes, however, that in providing an indicative list of relevant stakeholders, Paris Principle B.1 envisages either the "presence" or the ability to

establish "effective cooperation" with such representatives. Given the explicit requirements for independence stated throughout the Paris Principles, examples of which are referenced above, the Sub-Committee is of the view that a similar restriction must apply to members of parliament, and particularly those who are members of the ruling political party or coalition.

Excerpt from the Paris Principles

B) Composition and guarantees of independence and pluralism –

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

. . .

(d) Parliament

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

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

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

(C) Methods of operation

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

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

1. Essential requirements of the Paris Principles

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

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

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

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

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

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

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

JUSTIFICATION

Section B.2 of the Paris Principles addresses the requirement for National Institutions to be adequately funded as a guarantee of their independence. The purpose of such funding and a

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

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

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

Donor funding

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

Financial systems and accountability

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

Excerpt from the Paris Principles

B) Composition and guarantees of independence and pluralism –

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

1. Essential requirements of the Paris Principles

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

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

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

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

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

JUSTIFICATION

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

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

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

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

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

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

Excerpt from the Paris Principles

A) Competence and responsibilities –

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

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

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

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

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

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

2. Practices that directly promote Paris Principles compliance

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

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

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

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

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

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

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

JUSTIFICATION

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

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

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

Excerpt from the Paris Principles

B) Composition and guarantees of independence and pluralism –

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

2. Practices that directly promote Paris Principles compliance

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

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

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

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

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

JUSTIFICATION

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

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

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

Excerpt from the Paris Principles

B) Composition and guarantees of independence and pluralism –

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

2. Practices that directly promote Paris Principles compliance

G.O. 2.3 Guarantee of functional immunity

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

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

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

JUSTIFICATION

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

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

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

Excerpt from the Paris Principles

B) Composition and guarantees of independence and pluralism –

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

C) Methods of operation –

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

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

...

2. Practices that directly promote Paris Principles compliance

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

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

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

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

JUSTIFICATION

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

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

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

Excerpt from the Paris Principles

B) Composition and guarantees of independence and pluralism –

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

2. Practices that directly promote Paris Principles compliance

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

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

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

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

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

JUSTIFICATION

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

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

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

Excerpt from the Paris Principles

B) Composition and guarantees of independence and pluralism –

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

2. Practices that directly promote Paris Principles compliance

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

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

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

JUSTIFICATION

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

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

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

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

In order to fulfil its obligations, it is necessary that the National Institution continue to conduct itself with a heightened level of vigilance and independence in the exercise of its mandate. The Sub-Committee will scrutinize the extent to which the National Institution concerned has taken steps to the maximum of its available resources to provide the greatest possible protection for the human rights of each individual within its jurisdiction.

Excerpt from the Paris Principles

A. Competence and responsibilities –

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

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

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

...

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

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

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

...

C. Methods of operation –

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

...

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

2. Practices that directly promote Paris Principles compliance

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

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

JUSTIFICATION

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

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

Excerpt from the Paris Principles

A) Competence and responsibilities –

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

2. Practices that directly promote Paris Principles compliance

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

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

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

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

JUSTIFICATION

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

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

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

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

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

Excerpt from the Paris Principles

B) Composition and guarantees of independence and pluralism –

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

2. Practices that directly promote Paris Principles compliance

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

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

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

- whether a formal legal mandate has been provided;
- whether the mandate has been appropriately defined to encompass the promotion and protection of all relevant rights contained in the international instrument;
- whether the staff of the NHRI possess the appropriate skills and expertise;
- whether the NHRI has been provided with additional and adequate resources;
- whether there is evidence that the NHRI is effectively undertaking all relevant roles and functions as may be provided in the relevant international instrument. Depending on the instrument and the mandate of the national human rights institution, such activities might include monitoring and investigation, the provision of constructive and/or critical advice to government and in particular, systematic follow up of its recommendations and findings on alleged human rights violations.²⁰

The Sub-Committee may also consider, as it thinks appropriate, any guidance that has been developed by the relevant treaty body.²¹

JUSTIFICATION

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

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

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

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

²⁰ With regard to National Preventive Mechanisms under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, see for example Articles 17 – 13 of Part III of that instrument and the rights protected in the parent Convention. With regard to National Monitoring Mechanisms under the Convention on the Rights of People with Disabilities, see for example principles and functions outlined in Articles 3, 4, 31, 32, 33 and 35, and the rights protected in Articles 3 – 30.

²¹ With regard to National Preventive Mechanisms under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, see for example the *Preliminary Guidelines for the Ongoing Development of National Preventive Mechanisms* developed by the Sub-Committee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and contained in paragraphs 24 – 29 of its First Annual Report (February 2007 – March 2008). (Ref: CAT/C/40/2).

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

Excerpt from the Paris Principles

(A) Competence and responsibilities.

...

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

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

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

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

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

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

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

...

2. Practices that directly promote Paris Principles compliance

G.O. 2.10 The quasi-judicial²² competency of National Human Rights Institutions (complaints-handling)

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

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

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

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

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

²²The term 'quasi-judicial competence' as cited in the Paris Principles has been recognized as a translation error. It is instead meant to be understood as 'quasi-judicial competence' and it refers to a NHRI's complaints-handling mandate and its related functions and powers.

JUSTIFICATION

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

Excerpt from the Paris Principles

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

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

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

6. Procedural issues²³

G.O. 6.1 Application processes

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

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

G.O. 6.2 Deferral of re-accreditation applications

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

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

G.O. 6.3 NHRIs under review

Pursuant to Article 16 of the ICC Statute²⁴, 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.

²³ Section 6 (6.1-6.6) of the General Observations was adopted by the International Coordinating Committee of National Human Rights Institutions for the Promotion and Protection of Human Rights (ICC) by email after the SCA meeting of March 2009. This section is currently undergoing revision by the ICC Working Group on General Observations.

²⁴ Formerly article 3(g) of the ICC Rules of Procedure.

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

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

G.O. 6.4 Suspension of accreditation

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

G.O. 6.5 Submission of information

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

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

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

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

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

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

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

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

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

6. Procedural Issues

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

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

JUSTIFICATION

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

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

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

- a detailed statement showing how it complies with the Paris Principles as well as any respects in which it does not so comply and any proposals to ensure compliance.
- a copy of the legislation or other instrument (relevant laws, rules and regulations) by which it is established and empowered in its official or published format;
- an outline of its organizational structure including staff complement;
- its annual budget; and
- a copy of its most recent annual report or equivalent document in its official or published format.

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

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

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

Geneva, May 2013