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

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

**Geneva, 3-6 November 2008**

1. **BACKGROUND**
	1. In accordance with the Statute of the International Coordinating Committee of National Institutions for the Protection and Promotion of Human Rights (ICC), the Sub-Committee on Accreditation (the Sub-Committee) has the mandate to consider and review applications for accreditation, re-accreditation and special or other reviews received by the National Institutions Unit of the Office of the United Nations High Commissioner for Human Rights (OHCHR) in its capacity as the ICC Secretariat, and to make recommendations to the ICC Bureau members with regard to the compliance of applicant institutions with the Paris Principles. The Sub-Committee assesses compliance with the Paris Principles in law and in practice.
	2. In accordance with the Sub-Committee Rules of Procedure, the Sub-Committee is composed of representatives of each region: the National Human Rights Institutions (NHRIs) of Germany for Europe (chair), Morocco for Africa (replacing Rwanda), the Republic of Korea for Asia-Pacific and Canada for the Americas. The Sub-Committee convened from 03 to 06 November 2008. OHCHR participated as a permanent observer and in its capacity as ICC Secretariat. In accordance with new procedures, regional coordinating bodies of NHRIs were invited to attend as observers. The Sub-Committee welcomed the participation of a representative of the Asia Pacific Forum of NHRIs.
	3. The Sub-Committee notes the new ICC Statute adopted at the 21st session of the ICC on 21 October 2008 in Nairobi, Kenya (attached as Annex 1). The Sub-Committee applied these new procedures to its work in the current session, as set out below.
	4. Pursuant to article 10 of the Statute, the Sub-Committee considered applications for accreditation from Great Britain (Equality and Human Rights Commission), Qatar, Russia, and Switzerland (Commission fédérale pour les quéstions féminines).
	5. Pursuant to article 15 of the Statute, the Sub-Committee also considered applications for re-accreditation from: Albania, Bosnia and Herzegovina, Germany, Ghana, Ireland, Kenya, Luxembourg, Mongolia, Paraguay, Republic of Korea, Sweden and Thailand.
	6. Pursuant to article 17 of the Statute, the Sub-Committee reviewed certain issues regarding the NHRIs of Afghanistan and Nepal.
	7. In accordance with the Paris Principles and the ICC Sub-Committee Rules of Procedure, the different classifications for accreditation used by the Sub-Committee are:

A: Compliance with the Paris Principles;

B: Observer status – Not fully in compliance with the Paris Principles or insufficient information provided to make a determination;

C: Non-compliance with the Paris Principles.

* 1. The Sub-Committee formulated General Observations (attached as Annex 3).

Recommendation: The Sub-Committee recommends the adoption of General Observations attached as Annex 3, provided that, should any member of the ICC Bureau request that one or more of the General Observations be referred to the ICC22 Bureau meeting, that/those General Observation(s) shall be considered by the ICC Bureau at ICC22 in March 2009.

* 1. The General Observations, as interpretative tools of the Paris Principles, may be used to:
1. Instruct institutions when they are developing their own processes and mechanisms, to ensure Paris Principles compliance;
2. Persuade domestic governments to address or remedy issues relating to an institution’s compliance with the standards articulated in the General Observations;
3. Guide the Sub-Committee on Accreditation in its determination of new accreditation applications, re-accreditation applications or other review:
	1. If an institution falls substantially short of the standards articulated in the General Observations, it will be open for the Sub-Committee to find that it was not Paris Principle compliant.
	2. 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.
	3. The Sub-Committee notes that in all applications considered reference could be made to the General Observation 1.4 “Interaction with the International Human Rights System” and encourages all NHRIs to interact consistently with the international human rights system (UN Human Rights Treaty Bodies, Special Procedures mandate holders and Human Rights Council, including the UPR), providing information independently of the Government and later ensuring follow up action to recommendations resulting from that system (and to rely on the services of the ICC Representative in Geneva when necessary).
	4. The Sub-Committee notes that in all applications considered reference could be made to the General Observation on 2.6 “Adequate funding”. Provision of adequate funding by the State should, as a minimum include:
4. the allocation of funds for adequate accommodation, at least its head office;
5. salaries and benefits awarded to its staff comparable to public service salaries and conditions;
6. remuneration of Commissioners (where appropriate); and
7. the establishment of communications systems including telephone and internet.

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

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

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

* 1. The Sub-Committee notes that when specific issues are raised in its report in relation to accreditation, re-accreditation and other review, NHRIs are required to address these issues in any subsequent application or other review.
	2. The Sub-Committee encourages all accredited NHRIs to inform the ICC Bureau at the first available opportunity about circumstances that would negatively affect their ability to meet the standards and obligations of the Paris Principles.
	3. When the Sub-Committee declares its intention to consider particular issues within a specified time-frame, the outcome of the review may lead to a recommendation which may affect the accreditation status. In the event additional issues arise during the course of the review, the Sub-Committee will so notify the NHRI.
	4. As per article 12 of the Statute, where the Sub-Committee on Accreditation comes to an accreditation decision, that decision shall be considered an accreditation status recommendation, with the final decision being taken by the ICC Bureau after the following process has occurred:
* 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 a majority of members of the ICC Bureau notify the ICC Secretariat that they hold a similar objection, the recommendation shall be referred to the next ICC Bureau meeting for decision;
* If a majority of members do not raise objection to the recommendation within twenty (20) days of its receipt, the recommendation shall be deemed to be approved by the ICC Bureau;
* The decision of the ICC Bureau on accreditation is final.
	1. As provided for in the Statute, in cases where the Sub-Committee considers a recommendation that would serve to remove accredited status from an applicant institution, the applicant institution is informed of this intention and given the opportunity to provide in writing, within one year of such notice, the documentary evidence deemed necessary to establish its continued conformity with the Paris Principles. The concerned institution retains its “A” status during this period.
	2. The Sub-Committee continued to consult with concerned NHRIs, where necessary, during its session. Prior to the session, all concerned NHRIs were requested to provide a name and phone number in case the Sub-Committee needed to contact the Institution. In addition, OHCHR desk officers and, as appropriate, OHCHR field officers were available to provide further information, as needed.
	3. The Sub-Committee acknowledges the high degree of support and professionalism of the staff of the ICC Secretariat (OHCHR National Institutions Unit).
1. **ADOPTION OF NEW PROCEDURES**
	1. The Sub-Committee continued to develop its procedures in the ongoing effort to advance the principles of rigour, transparency, and fairness of the accreditation process.
	2. The November 2008 session of the Sub-Committee was open to NHRI regional coordinating committees to attend as observers. All four committees were invited to participate. A representative of the Asia Pacific Forum of NHRIs attended the session. The Sub-Committee encourages the participation of all regional coordinating committees in future sessions.
	3. The Sub-Committee shared the summaries prepared by the Secretariat with the concerned NHRIs before the consideration of their applications and they were given one week to comment on them. All comments received, together with the summaries, were then sent to the members of the Sub-Committee. Once the recommendations of the Sub-Committee are adopted by the ICC Bureau, according to the procedures, the summaries and the comments and the statement of compliance will be posted on the NHRI Forum ([www.nhri.net](http://www.nhri.net)). The summaries are currently only prepared in English, due to current financial constraints.
	4. The Sub-Committee considered information received from civil society. The Sub-Committee shared that information with the concerned NHRIs and considered their responses.
	5. The Sub-Committee agreed, commencing with its next session, to consider only that information from civil society that is received by the National Institutions Unit at least four (4) months prior to the next session of the Sub-Committee.
2. **SPECIFIC RECOMMENDATIONS – NEW ACCREDITATION APPLICATIONS**
	1. **Great Britain: Equality and Human Rights Commission (EHRC)**

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

The Sub-Committee acknowledges the EHRC met all of the mandatory requirements set out in General Observation 6.6 “More than one National Institution in a State”. It emphasizes the importance of further developing cooperation between the EHRC, the Northern Ireland Human Rights Commission and the Scottish Human Rights Commission. It also refers to General Observation 1.5 “Cooperation with other human rights institutions”.

The Sub-Committee notes the following:

1. In the current effort to unify the different anti-discrimination and equality legislation, it is important that the views of the EHRC be considered. It recommends that:
	1. the functions of the EHRC be expanded to give it an explicit mandate to protect human rights, including the power to receive and determine complaints on human rights violations;
	2. the EHRC’s mandate be expanded to include explicit powers regarding the harmonisation of national legislation with international human rights instruments and principles, and the encouragement of their ratification and implementation. The Sub-Committee refers to General Observation 1.3 “Encouraging ratification or accession to international human rights instruments”;
	3. the Equality Act include a specific reference to pluralism with regard to the appointments process. The Sub-Committee refers to General Observations 2.1 “Ensuring pluralism” and 2.2 “Selection and appointment of the governing body”;
	4. the grounds for dismissal of a Commissioner be more clearly defined. The Sub-Committee refers to General Observation 2.9 “Guarantee of tenure for members of governing bodies”.

The Sub-Committee also notes the requirement for the Minister’s consent in relation to the following issues: payment of Commissioners; the numbers, terms and conditions of staff appointments; and the appointment of investigating commissioners. The Sub-Committee emphasizes that this relationship should not negatively influence the EHRC’s ability to function independently. The Sub-Committee refers to General Observation 1.6 “Recommendations by NHRIs”.

* 1. **Qatar: National Committee for Human Rights (NCHR)**

**Recommendation:** The Sub-Committee recommends that consideration of the application of the NCHR **be deferred** to the March 2009 Sub-Committee session **while keeping its current accreditation B Status**.

The Sub-Committee notes that insufficient information was provided for it to make a determination and encourages the NCHR to seek advice and assistance from OHCHR and the Asia Pacific Forum of NHRIs.

* 1. **Russia: Office of the Commissioner for Human Rights (OCHR)**

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

The Sub-Committee notes the following:

1. It recommends that the OCHR engage systematically with the international human rights system as well as the European human rights system. The Sub-Committee emphasizes the importance of General Observation 1.4 “Interaction with the international human rights system”;
2. It encourages the continued interaction of the OCHR with civil society organizations;
3. It encourages the OCHR to institutionalize the cooperation with the regional human rights institutions of the subjects of the Russian Federation and refers to General Observation 1.5 “Cooperation with other human rights institutions”. The Sub-Committee acknowledges the existence of the Coordination Council;
4. It refers to General Observation 2.2 “Selection and appointment of the governing body” and in particular the need for the appointment process to be transparent;
5. It refers to General Observation 1.6 “Recommendations by NHRIs”.
	1. **Switzerland: Commission fédérale pour les quéstions féminines (CFQF)[[1]](#footnote-2)**

**Recommendation:** After consideration of the application of the CFQF, the Sub-Committee is not satisfied that the CFQF is in compliance with the Paris Principles and recommends that the application be **deferred**, to allow the CFQF to take such steps as necessary to expand its powers. The Sub-Committee encourages the CFQF to also consider consolidating together with other existing human rights commissions in Switzerland into a comprehensive NHRI with a broad mandate in line with the Paris Principles.

1. **SPECIFIC RECOMMENDATIONS – RE – ACCREDITATION APPLICATIONS**
	1. **Albania: People’s Advocate (PA)**

**Recommendation:** The Sub-Committee recommends that the People’s Advocate (PA) be re-accredited with **status A**.

The Sub-Committee notes the following:

1. It recommends that the mandate of the PA be strengthened to include human rights promotion and refers to General Observation 1.2 “Human rights mandate”;
2. It refers to the importance for the PA to be accessible as requested by the Paris Principles and in this regard recommends the establishment of a permanent regional presence, for example through regional offices;
3. It refers to the need for the PA to systematically interact with the international human rights system and further refers to General Observation 1.4 “Interaction with the International Human Rights System”;
4. It stresses the importance for the PA to have a transparent appointments process, based on a broad advertisement of the vacancy and a broad consultation. It further refers to General Observation 2.2 “Selection and appointment of the governing body”.

The Sub-Committee notes with concern the lack of dialogue and follow up by the Parliament to the work of the PA despite the provisions contained in the Law on the People’s Advocate.

* 1. **Bosnia and Herzegovina: Human Rights Ombudsman (HRO)**

**Recommendation:** The Sub-Committee recommends that consideration of the application for re-accreditation of the HRO **be deferred.**

In support of the ongoing effort to merge the existing human rights institutions in Bosnia and Herzegovina, the Sub-Committee agreed to defer the consideration of the re-accreditation of the national human rights institution of Bosnia and Herzegovina until the October/November 2009 session of the Sub-Committee. The Sub-Committee refers to General Observation 6.2 “Deferral of re-accreditation applications”, in particular to stress the timeframe contained in the General Observation and adopted by the ICC.

* 1. **Germany: German Institute for Human Rights (GIHR)**

The Sub-Committee reviewed this application in the absence of the German representative on the Sub-Committee.

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

The Sub-Committee notes the following:

1. It refers to the importance for the GIHR to further broaden its mandate to include complaint handling functions;
2. It stresses the importance of ensuring pluralism at all levels in the GIHR on a more permanent and formal basis and in a manner distinct from the length of the contracts of the staff in particular with regard to gender balance and ethnic diversity. It also underlines the need to clarify the contradiction between articles 9(1) and 11(3) of the GIHR Statutes in order to ensure that the Board of Trustees provides a written explanation for rejecting an application for General Membership or for expelling a member. In this context the Sub-Committee refers to General Observation 2.1 “Ensuring pluralism”;
3. While article 24(2) of the GIHR’s Statute provide that the German Government’s representatives on the Board of the Trustees have no voting rights, article 24(1) indicates that two of the GIHR’s Trustees must be members of the German’s Bundestag’s Committee on Human Rights and Humanitarian Aid. The Statute does not exclude these representatives from voting on decisions made by the Board of Trustees. The Sub-Committee refers to General Observation 2.3 “Government representatives on national institutions”.

The Sub-Committee expresses its concern that the GIHR is founded by a Motion of the Bundestag (Motion 14/4801). Notwithstanding the fact that the Motion was unanimously adopted and that the GIHR is functioning independently and effectively under this arrangement, the Sub-Committee reiterates the need for an NHRI to be established in a constitutional or legal text and therefore recommends the adoption of a stronger legal basis for the Institute. It refers to General Observation 1.1 “Establishment of national institutions”.

It also highlights the need for the GIHR to broaden its mandate to include the protection functions as contained in General Observation 1.2 “Human rights mandate”.

* 1. **Ghana: Commission of Human Rights and Administrative Justice (CHRAJ)**

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

The Sub-Committee notes the following:

1. The CHRAJ’s most recent annual report is for the year 2005. This made it more difficult for the Sub-Committee to review the CHRAJ. The Sub-Committee refers to General Observation 6.7 “NHRI Annual Report”;
2. It highlights the desirability of ensuring that the composition of the Council of State explicitly includes members of civil society and other social forces and, in this regard, refers to General Observation 2.1 “Ensuring Pluralism”.
	1. **Ireland: Irish Human Rights Commission (IHRC)**

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

The Sub-Committee notes the following:

1. the process for appointing Commissioners adopted by the Government in 2006 ought to be formalized in the IHRC’s enabling legislation to guarantee ongoing transparency. It refers to General Observation 2.2 “Selection and appointment of the governing body”;
2. the grounds for dismissal of a Commissioner ought to be more clearly defined. The Sub-Committee refers to General Observation 2.9 “Guarantee of tenure for members of governing bodies”;
3. the IHRC should be able to independently conduct its affairs without undue interference from the Government. This could include having direct accountability to Parliament. The Sub-Committee refers to General Observation 2.10 “Administrative regulation”.

The Sub-Committee notes that under Section 22 of the IHRC’s enabling legislation, its financial grant is determined by the Minister for Justice with the consent of the Minister for Finance.

The Sub-Committee expresses deep concern about plans to significantly reduce the IHRC’s budget for 2009. This would undermine the IHRC’s capacity to carry out its mandate effectively and threatens its financial autonomy. The Sub-Committee urges that this plan be reconsidered. It refers to General Observation 2.6 “Adequate funding”.

* 1. **Kenya: National Commission on Human Rights (NCHR)**

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

The Sub-Committee notes the following:

1. it highlights the need for the NCHR to have financial autonomy, including by submitting its budget directly to Parliament;
2. it stresses the importance for the NCHR to receive adequate funding in order to hire the necessary staff and to be able to establish a permanent regional presence, for example through regional offices. It refers to General Observation 2.6 “Adequate funding”;
3. it underlines the need to entrench in the mandate of the NCHR the encouragement of ratification or accession to international human rights instruments and refers to General Observation 1.3 “Encouraging ratification or accession to international human rights instruments”.
	1. **Luxembourg: Commission Consultative des Droits de l’Homme (CCDH)**

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

The Sub-Committee acknowledges that the Draft Law of 2008 (*Projet de Loi No. 5882*)was unanimously adopted by the Chamber of Deputies on 22 October. The Sub-Committee further acknowledges the CCDH is developing an internal regulatory document.

The Sub-Committee considers the following issues need to be addressed:

1. Neither the Règlement de 2000 nor the *Projet de Loi* imposes any legal requirements to ensure the pluralism of the institution’s membership and staff composition. The Sub-Committee refers to General Observation 2.1 “Ensuring pluralism”;
2. Article 4 (1) of the *Projet de Loi* establishes the exclusive authority of the Government to nominate members of the CCDH without consultation. The Sub-Committee refers to General Observation 2.2 “Selection and Appointment of the Governing Body”;
3. The grounds for dismissal of the CCDH’s members are not specified in the *Projet de Loi*. The Sub-Committee refers to General Observation 2.9 “Guarantee of Tenure for Members of Governing Bodies”;
4. None of the CCDH’s members occupies a permanent full-time position. The Sub-Committee refers to General Observation 2.8 “Full-time Members”;
5. The CCDH’s annual budget for non-post expenditures has been set for the past 3 years at 12,500 EUR. The Sub-Committee refers to General Observation 2.6 “Adequate funding”. There is also no indication that the CCDH exercises budgetary autonomy;
6. The *Projet de Loi* does not provide CCDH members with functional immunity. The Sub-Committee refers to General Observation 2.5 “Immunity”;
7. The CCDH should further develop relationships with civil society. The Sub-Committee refers to General Observation 1.5 “Cooperation with other human rights institutions”.
	1. **Mongolia: National Human Rights Commission (NHRC)**

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

The Sub-Committee notes the following:

1. It stresses the need for adequate funding provided by the state and refers to General Observation 2.6 “Adequate Funding”;
2. It acknowledges that the NHRC is seeking to secure premises that are separate from government offices and which are accessible, including for persons with disabilities;
3. it stresses the importance for the NHRC to establish a permanent regional presence, for example through regional offices;
4. It expresses its appreciation to the NHRC for having carried out its mandate in a difficult and volatile political and security related situation and stresses the need for the NHRC to be vigilant in monitoring, promoting and protecting human rights. It refers to General Observation 5.1 “NHRIs during the situation of a coup d’état or a state of emergency”;
5. It recommends that the appointments process be transparent and that consultation and engagement with civil society be enhanced. It refers to General Observation 2.2 “Appointments procedure”;
6. It notes the requirement to provide the Sub-Committee with a translated executive summary of the annual human rights report. The Sub-Committee refers to General Observation 6.7 “NHRI annual report”.
	1. **Paraguay: Defensoría del Pueblo (DP)**

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

The Sub-Committee notes the following:

1. Salaries of staff members of the DP are lower than those of civil servants performing similar tasks in other institutions of the State. The Sub-Committee emphasizes the need to allocate a sufficient amount of resources for activities. It refers to General Observation 2.6 “Adequate funding”;
2. It encourages the DP to interact consistently with the international human rights system, in particular the UN Human Rights Treaty Bodies, Special Procedures Mandate Holders and Human Rights Council, including the UPR. It refers to General Observation 1.4 “Interaction with other human rights institutions”;
3. It also encourages the DP to consistently interact with civil society and refers to General Observation 1.5 “Cooperation with other human rights institutions” in this regard.
	1. **Republic of Korea: National Human Rights Commission (NHRCK)**

The Sub-Committee reviewed this application in the absence of the Korean representative on the Sub-Committee.

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

The Sub-Committee notes the following:

1. The NHRCK is considered a “central government institution” under the National Fiscal Act and as such does not enjoy complete functional autonomy from the Government. This is in contrast to “independent institutions”, which are constitutionally entrenched;
2. Under article 5 of the founding Act, the process of appointing Commissioners, on nomination from the President, the National Assembly or the Chief Justice of the Supreme Court, does not provide for formal public consultation in the recruitment and scrutiny of candidates nor for the participation of civil society. The Sub-Committee refers to General Observations 2.1 “Ensuring pluralism” and 2.2 “Selection and appointment of the governing body” and encourages the adoption of procedures that ensure a broad and transparent appointment process. This should be done through public advertisement and a broad consultation procedure;
3. It acknowledges the action taken during the recent Candle Light Vigils and encourages the NHRCK to consider issuing public statements and reports through the media in a timely manner to address urgent human rights violations;
4. It stresses the need for the NHRCK to have more autonomy to appoint its own staff in a manner that does not unnecessarily delay the fulfilment of the NHRCK needs. The Sub-Committee refers to General Observation 2.7 “Staff of an NHRI”.

The Sub-Committee expresses its concern about the recent proposal to place the Commission directly under the Office of the President and subsequent interventions in the Commission’s financial and administrative affairs. It refers to General Observation 2.10 “Administrative regulation”.

* 1. **Sweden: Equal Opportunities Ombudsman (EOO)**

**Recommendation:** The Sub-Committee recommends that the accreditation status of the EEO **lapse.**

The Sub-Committee on Accreditation has been informed that legislation consolidating the four current ombuds-institutions will come into force and effect on 1 January 2009.

As per General Observation 6.2 “Deferral of re-accreditation applications”, the Sub-Committee recommends the lapse of the accreditation status of the EEO. It invites the new institution to apply for accreditation.

* 1. **Thailand: National Human Rights Commission (NHRC)**

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

The Sub-Committee notes the following:

1. The NHRC is located at the Anti-Money Laundering Office, which is heavily guarded by police forces. The Sub-Committee acknowledges that the NHRC is seeking to secure separate premises. It recommends that accessibility be further enhanced by establishing permanent regional presence, for example through regional offices. It refers to General Observation 2.6 “Adequate Funding”;
2. The Sub-Committee emphasizes the need for broad consultation in the nomination and selection of Commission members, including with civil society and vulnerable groups. It refers to General Observations 2.1 “Ensuring pluralism” and 2.2 “The selection and appointment of the governing body”;
3. The NHRC’s permanent staff members are seconded from various government ministries. The Sub-Committee refers to General Observations 2.4 “Staffing by secondment” and 2.7 “Staff of an NHRI”;
4. The UN Human Rights Committee expressed its concern that many of NHRC’s recommendations to the relevant authorities have not been implemented and given serious follow-up. The Sub-Committee refers to General Observation 1.6 “Recommendations by NHRIs”;
5. The grounds for dismissal of a Commissioner ought to be more clearly defined. The Sub-Committee refers to General Observation 2.9 “Guarantee of tenure for members of governing bodies”.
6. **SPECIFIC RECOMMENDATIONS – REVIEWS UNDER ARTICLE 17**
	1. **Afghanistan: Afghanistan Independent Human Rights Commission (AIHRC)**

**Recommendation:** The Sub-Committee confirms the **status A** accreditation of the Commission.

The Sub-Committee notes the following:

1. It expresses its appreciation to the AIHRC for carrying out its mandate in a difficult and volatile political and security related context and encourages the AIHRC to continue its vigilant role in monitoring, promoting and protecting human rights. The Sub-Committee refers to General Observation 5.1 “NHRIs during the situation of a coup d’état or a state of emergency”;
2. It recognizes the need for the international community to continue to engage and support the AIHRC in order to ensure it receives adequate funding, until such time when the State will be able to cover the AIHRC’s adequate funding. The AIHRC should ensure the coordinated, transparent and accountable management of funding.

The Sub-Committee expresses its concern over any attempt to undermine the effectiveness and independence of the AIHRC, in particular through financial or budgetary constraints and/or amendments of its legal structure. Any reform, particularly to the appointment process, should only aim at enhancing the AIHRC’s independence, transparency and effectiveness.

* 1. **Nepal: National Human Rights Commission (NHRC)**

**Recommendation:** The Sub-Committee confirms the **status A** accreditation of the NHRC.

The Sub-Committee acknowledges NHRC's response to the concerns it raised in October 2007, particularly with regard to the issue of financial autonomy.  Having completed its review, it also reiterates the comments it made in its October 2007 report regarding adequate funding and selection and appointment of the governing body.

In the course of the review, the Sub-Committee noted that the NHRC legislation has not yet been adopted by the Parliament and therefore it encourages the NHRC to promote the development of legislation in full compliance with the Paris Principles.

The Sub-Committee encourages the NHRC to increase its cooperation with statutory institutions for the promotion and protection of human rights as well as civil society organizations. It refers to General Observation 1.5 “Cooperation with other human rights institutions”.

**The Sub-Committee will again consider these issues at its October/November 2009 session**.

**ANNEX 1 (not included)**

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

**STATUTE**

**…..**

**ANNEX 2**

**ICC SUB-COMMITTEE ON ACCREDITATION**

**GENERAL OBSERVATIONS**

**Preamble**

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

1. Instruct institutions when they are developing their own processes and mechanisms, to ensure Paris Principles compliance;
2. Persuade domestic governments to address or remedy issues relating to an institution’s compliance with the standards articulated in the General Observations;
3. Guide the Sub-Committee on Accreditation in its determination of new accreditation applications, re-accreditation applications or special reviews:
4. 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.
5. 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.
6. **Competence and responsibilities**
	1. **Establishment of national institutions:** An NHRI must be established in a constitutional or legal text. Creation by an instrument of the Executive is not adequate to ensure permanency and independence.
	2. **Human rights mandate:** All NHRIs should be mandated with specific functions to both protect and promote human rights, such as those listed in the Paris Principles.
	3. **Encouraging ratification or accession to international human rights instruments**: The Sub-Committee interprets that the function of encouraging ratification or accession to international human rights instruments, set out in the Paris Principles, is a key function of a National Institution. The Sub-Committee therefore encourages the entrenchment of this function in the enabling legislation of the National Institution to ensure the best protection of human rights within that country.
	4. **Interaction with the International Human Rights System:** The Sub-Committee would like to highlight the importance for NHRIs to engage with the international human rights system, in particular the Human Rights Council and its mechanisms (Special Procedures Mandate Holders) and the United Nations Human Rights Treaty Bodies. This means generally NHRIs making an input to, participating in these human rights mechanisms and following up at the national level to the recommendations resulting from the international human rights system. In addition, NHRIs should also actively engage with the ICC and its Sub-Committee on Accreditation, Bureau as well as regional coordinating bodies of NHRIs.
	5. **Cooperation with other human rights institutions:** NHRIs should closely cooperate and share information with statutory institutions established also for the promotion and protection of human rights, for example at the state level or on thematic issues, as well as other organizations, such as NGOs, working in the field of human rights and should demonstrate that this occurs in their application to the ICC Sub-Committee.
7. **Composition and guarantees of independence and pluralism**
	1. **Ensuring pluralism:** The Sub-Committee notes there are diverse models of ensuring the requirement of pluralism set out in the Paris Principles. However, the Sub-Committee emphasizes the importance of National Institutions to maintain consistent relationships with civil society and notes that this will be taken into consideration in the assessment of accreditation applications.

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

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 emphasizes that the principle of pluralism includes ensuring the meaningful participation of women in the National Institution.

* 1. **Selection and appointment of the governing body:** The Sub-Committee notes the critical importance of the selection and appointment process of the governing body in ensuring the pluralism and independence of the National Institution. In particular, the Sub-Committee emphasizes the following factors:
1. A transparent process
2. Broad consultation throughout the selection and appointment process
3. Advertising vacancies broadly
4. Maximizing 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.
	1. **Government representatives on National Institutions**: The Sub-Committee understands that the Paris Principles require that Government representatives on governing or advisory bodies of National Institutions do not have decision making or voting capacity.
	2. **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.
	1. **Immunity:** It is strongly recommended that provisions be included in national lawto protect legal liability for actions undertaken in the official capacity of the NHRI.
	2. **Adequate Funding:** Provision of adequate funding by the state should, as a minimum include:
3. the allocation of funds for adequate accommodation, at least its head office;
4. salaries and benefits awarded to its staff comparable to public service salaries and conditions;
5. remuneration of Commissioners (where appropriate); and
6. the establishment of communications systems including telephone and internet.

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

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

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

* 1. **Staff of an NHRI**: As a principle, NHRIs should be empowered to appoint their own staff.
	2. **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;
2. Ensure a stable mandate for the members;
3. Ensure the ongoing and effective fulfillment of the mandate of the NHRI.
	1. **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.
4. **Methods of operation**
5. **Additional principles concerning the status of commissions with quasi-jurisdictional competence**
6. **Additional issues**
	1. **NHRIs during the situation of a coup d’état or a state of emergency:** As a principle, the Sub-Committee expects that, in the situation of a coup d’état or a state of emergency, an NHRI will conduct itself with a heightened level of vigilance and independence in the exercise of their mandate.
	2. **Limitation of power of National Institutions due to national security:** The Sub-Committee notes that the scope of the mandate of many National Institutions is restricted for national security reasons. While this tendency is not inherently contrary to the Paris Principles, it is noted that consideration must be given to ensuring that such restriction is not unreasonably or arbitrarily applied and is exercised under due process.
7. **Procedural issues**
	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:
8. Deadlines for applications will be strictly enforced;
9. 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;
10. 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;
11. Applicants should provide documentation in its official or published form (for example, published laws and published annual reports) and not secondary analytical documents;
12. Documents must be submitted in both hard copy and electronically;
13. 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
14. It is the responsibility of the applicant to ensue that correspondence and application materials have been received by the ICC Secretariat.
	1. **Deferral of re-accreditation applications**: The Sub-Committee will apply the following policy on the deferral of re-accreditation applications:
15. 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;
16. Re-accreditation applications may be deferred for a maximum of one year, after this time the status of the NHRI will lapse; and
17. 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.
	1. **NHRIs under review:** Pursuant to article 3(g) of the ICC Rules of Procedure, the ICC Chair or the Sub-Committee may initiate a review of an NHRI’s accreditation if it appears that the circumstances of that NHRI may have changed in any way which affects its compliance with the Paris Principles. Such a review is triggered by an exceptional set of circumstances considered to be temporary in nature. As a consequence, the regular re-accreditation process will be deferred until the review is completed.

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

1. An NHRI can be under review a maximum of one and a half years only, during which time it may bring information to the Sub-Committee to demonstrate that, in the areas under review, the NHRI is fully compliant with the Paris Principles;
2. During the period of review, all privileges associated with the existing accreditation status of the NHRI will remain in place;
3. 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.
	1. **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.
	2. **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.

* 1. **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 Rule 3 (b) of the ICC rules of procedure provide for only one speaking right, one voting right and only one is eligible for election as a member of the ICC bureau.

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

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

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

Adopted by International Coordinating Committee of National Human Rights Institutions for the Promotion and Protection of Human Rights (ICC) by email after the SCA meeting of April 2008.

 Compilation of 20 October 2008, Nairobi, Kenya

**ANNEX 3**

**General Observations developed by the Sub-Committee at its November 2008 session**

**1.6 Recommendations by NHRIs**

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

**2.10 Administrative regulation**

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

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

**6.7 NHRI annual report**

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

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1. Please note: The ICC Sub-Committee on Accreditation will review the CFQF again at its March 2009 session. [↑](#footnote-ref-2)