

COMITÉ INTERNATIONAL DE COORDINATION DES INSTITUTIONS NATIONALES POUR LA PROMOTION ET LA PROTECTION DES DROITS DE L'HOMME

Genève, du 21 au 23 avril 2008

Rapport et recommandations du Sous-comité d'accréditation

1. HISTORIQUE

- 1.1. Conformément au Règlement intérieur du Comité international de coordination des institutions nationales pour la promotion et la protection des droits de l'homme (CIC), le Sous-comité d'accréditation (le Sous-comité) a le mandat d'examiner et d'analyser les requêtes d'accréditation, de ré-accréditation et les examens spéciaux reçus par l'Unité des institutions nationales du Haut Commissariat des Nations Unies aux droits de l'homme, en sa qualité de secrétariat du CIC, et d'émettre des recommandations aux membres du CIC sur le respect des Principes de Paris par les institutions requérantes. Le mandat du Sous-comité consiste à examiner le respect en fait et en droit des Principes de Paris.
- 1.2. Conformément au Règlement intérieur du Sous-comité, celui-ci est composé de représentants des diverses régions: les INDH d'Allemagne pour l'Europe (présidence) ; du Maroc (qui remplace le Rwanda¹), pour l'Afrique ; de la République de Corée pour l'Asie et le Pacifique et du Canada pour les Amériques. Le Sous-comité s'est réuni du 21 au 23 avril 2008. Le Haut Commissariat des Nations Unies aux droits de l'homme a participé en qualité d'observateur permanent et en sa qualité de secrétariat du CIC.
- 1.3. Conformément à l'article 3 (c) du Règlement intérieur, le Sous-comité d'accréditation a examiné les demandes de ré-accréditation des pays suivants: Algérie, Équateur, Guatemala, Malaisie, Maurice, Niger, Ouganda et Venezuela.
- 1.4. Conformément à l'article 3 (c) du Règlement intérieur, le Sous-comité a également examiné les demandes d'accréditation des pays suivants: Croatie, Grande Bretagne, Maldives, Timor oriental et Ukraine.
- 1.5. Le Sous-comité a également débattu la ré-accréditation du Luxembourg et de la Suède et a décidé de renvoyer l'examen de ces demandes lors de sa session d'automne 2008.
- 1.6. Selon les Principes de Paris et le Règlement intérieur du Sous-comité du CIC, les différentes classifications² de l'accréditation utilisées par le comité sont les suivantes :

- A: Conforme aux Principes de Paris;
- B: Statut d'observateur – conformité partielle aux Principes de Paris ou renseignements insuffisants pour prendre une décision;

¹ Le Sous-comité observe que le Maroc n'a pas pris part au débat ni à la décision lors de l'examen de la Commission nationale consultative de promotion et protection des droits de l'homme de l'Algérie. La décision a été prise par le Sous-comité avec la participation du Rwanda.

² Le Sous-comité observe qu'il a cessé d'attribuer la classification A(R), en attendant l'adoption formelle des amendements au Règlement du CIC.

C: Non-conforme aux Principes de Paris.

1.7. Suivant la pratique introduite lors de sa réunion d'octobre 2006, le Sous-comité a continué à présenter des observations générales concernant l'accréditation. Ces observations ont été formulées sur des points d'interprétation communs ou importants et visent à constituer des directives pour les INDH lors de la mise en œuvre des Principes de Paris. La liste des observations générales n'est pas exhaustive et continuera à évoluer à mesure que le Sous-comité examinera d'autres demandes. La liste des observations générales adoptées par le CIC et classée selon les thèmes contenus dans les Principes de Paris est jointe à l'annexe 1 au présent rapport. Les observations générales élaborées par le Sous-comité lors de sa session d'avril 2008 (jointes à l'annexe 2) doivent encore être formellement adoptées par le CIC. L'observation générale 1.5 sur la "Coopération avec d'autres institutions de droits de l'homme" (jointe à l'annexe 3) doit encore être formellement adoptée par le CIC.

Recommandation: Le Sous-comité recommande l'adoption de l'observation générale jointe à l'annexe 2.

Recommandation: Le Sous-comité recommande l'adoption de l'observation générale révisée jointe à l'annexe 3.

1.8. Les observations générales constituent un outil servant à l'interprétation des Principes de Paris et peuvent être employées pour :

- a) Instruire les institutions lors de l'élaboration de leurs propres processus et mécanismes visant à respecter les Principes de Paris ;
- b) Convaincre les gouvernements nationaux d'aborder et de résoudre les problèmes liés au respect des normes énoncées dans les Observations générales par une institution ;
- c) Orienter le Sous-comité d'accréditation au moment de l'évaluation des nouvelles demandes d'accréditation, de ré-accréditation ou d'examen spécial :
 - i) Lorsqu'une institution est loin de respecter les normes énoncées dans les Observations générales, le Sous-comité peut être amené à décider qu'elle n'est pas en conformité avec les Principes de Paris.
 - ii) Si le Sous-comité a des doutes quant au respect par une institution de l'une quelconque des observations générales, il peut considérer les mesures éventuellement mises en œuvre par ladite institution pour résoudre le problème dans des demandes ultérieures. Si le Sous-comité ne reçoit pas de preuves des efforts réalisés pour se mettre en règle avec d'éventuelles Observations générales préalables et n'offre pas d'explications plausibles sur cette absence d'efforts, le Sous-comité a la possibilité de considérer que la situation de non respect des Principes de Paris n'a pas évolué.

1.9. Le Sous-comité observe que, dans toutes les demandes examinées, il est possible d'invoquer l'Observation générale « Interaction avec le système international des droits de l'homme » et encourage toutes les INDH à collaborer de manière routinière avec le système international des droits de l'homme (organes conventionnels de Nations unies, titulaires de mandats de procédures spéciales et Conseil des droits de l'homme, y compris l'EPU), en fournissant des informations indépendantes du gouvernement, et en assurant ensuite le suivi des recommandations qui émanent dudit système (en demandant l'aide des services du représentant du CIC à Genève, si nécessaire).

- 1.10.** Le Sous-comité observe qu'il a reçu le « Guide à l'intention du Sous-comité d'accréditation pour l'application des observations générales » (joint à l'annexe 4), approuvé lors de la 20^{ème} session du CIC, en avril 2008.
- 1.11.** Le Sous-comité observe que lorsqu'il aborde des questions spécifiques dans son rapport concernant une accréditation, une ré-accréditation ou un examen spécial, les INDH sont priées d'en tenir compte ultérieurement dans leurs éventuelles demandes ou examens spéciaux.
- 1.12.** Conformément au Règlement intérieur du CIC, le Sous-comité encourage toutes les INDH accréditées à avertir dès que possible le CIC de toute circonstance qui pourrait avoir des effets négatifs sur le respect par l'institution des normes et obligations des Principes de Paris.
- 1.13.** Lorsque le Sous-comité doit examiner des questions particulières dans un délai donné, le résultat de l'examen peut avoir des effets sur le statut du membre accrédité.
- 1.14.** Comme le prévoit le "Decision Paper on the Review of ICC Accreditation Procedures for National Human Rights Institutions" (« Document de décision sur l'examen des procédures d'accréditation pour les institutions des droits de l'homme - INDH) de mars 2008 » (joint en annexe 5) adopté par le CIC lors de sa 20^{ème} session d'avril 2008 (Decision Paper), les résultats de l'examen d'accréditation sont d'abord communiqués à l'INDH concernée, qui dispose d'un délai de 30 jours pour répondre aux questions soulevées par les membres du Sous-comité. Une fois ce délai échu, le rapport est envoyé aux membres votants du CIC
- 1.15.** Comme le prévoit le document de décision, les recommandations adoptées par le Sous-comité lors de sa session d'avril 2008 seront transmises à tous les membres ayant droit de vote, qui seront priés de les adopter par courriel dans un délai de 20 jours. Toutes les recommandations approuvées auront valeur de décision définitive. Les décisions qui n'auront pas été adoptées seront renvoyées pour examen à la session suivante du CIC.
- 1.16.** Comme le prévoit le document de décision, lorsque le Sous-comité examine une recommandation qui vise à déchoir une institution accréditée de son statut, l'institution ayant soumis la requête est informée de cette intention afin de lui donner la possibilité de fournir, par écrit, et dans un délai d'un an après réception de la notification, les preuves documentaires jugées nécessaires pour établir qu'elle n'a pas cessé de respecter les Principes de Paris. L'institution concernée conserve son statut A pendant ce délai.
- 1.17.** Le Sous-comité a continué à consulter les INDH concernées et les organes régionaux de coordination, lorsque le besoin s'est fait sentir. Cette procédure a été suivie dans plusieurs cas durant la présente session. Avant la session toutes les INDH avaient été priées de fournir un nom et un numéro de téléphone, au cas où le Sous-comité aurait besoin de contacter l'institution. En cas de besoin, les fonctionnaires du siège et, le cas échéant, les fonctionnaires détachés sur le terrain, du Haut Commissariat des Nations Unies aux droits de l'homme étaient également disponibles pour fournir des informations.
- 1.18.** Le Sous-comité tient à relever le fort soutien et le haut niveau de professionnalisme du personnel du secrétariat du CIC (Unité des institutions nationales du Haut Commissariat des Nations Unies aux droits de l'homme), qui ont été fondamentaux pour les activités du Sous-comité.

2. ADOPTION DE NOUVELLES PROCÉDURES

- 2.1. Dans le cadre de son effort de transparence en cours, le Sous-comité a continué à élaborer de nouvelles procédures.
- 2.2. Le Sous-comité a convenu qu'à partir de la prochaine session, le Secrétariat permettrait aux INDH de prendre connaissance des procès-verbaux avant l'examen des demandes et que les INDH auraient une semaine pour faire parvenir leurs commentaires au Secrétariat, qui les joindra ensuite aux procès-verbaux envoyés aux membres du Sous-comité. Une fois que les recommandations du Sous-comité auront été approuvées par le CIC, conformément à la procédure, les procès-verbaux et les commentaires seront affichés dans le forum des INDH (www.indh.net). En raison de contraintes financières actuelles, les procès-verbaux ne seront rédigés qu'en langue anglaise.
- 2.3. Le Sous-comité est amené à examiner également les informations reçues de la société civile. Il a convenu de transmettre ces informations aux INDH concernées.

3. RECOMMANDATIONS SPECIFIQUES – DEMANDES DE RE-ACCREDITATION

3.1. Algérie: Commission nationale consultative de promotion et protection des droits de l'homme

Recommandation: Le Sous-comité informe la Commission qu'il a l'intention de recommander au CIC son accréditation avec le **statut B**, et donne à la Commission la possibilité de fournir, par écrit et dans un délai d'un an dès réception de la présente notification, les preuves documentaires estimées nécessaires pour établir qu'elle n'a pas cessé de respecter les Principes de Paris. Pendant ce délai, la Commission garde son statut « A ».

Le Sous-comité observe que :

- 1) La Commission n'a pas fourni son rapport pour l'année en cours, mais seulement la liste d'activités relatives à la période allant de 2002 à 2004.
- 2) Le Sous-comité se réfère à l'Observation générale « Etablissement des institutions nationales » pour insister sur l'importance qu'il attache à l'établissement des institutions nationales au moyen d'un texte constitutionnel ou légal.
- 3) Le processus de nomination et de révocation du Président et des membres de la commission n'est pas clair et transparent. Le Sous-comité se réfère à l'Observation générale « Sélection et désignation de l'organe directeur ».
- 4) Le Sous-comité encourage la Commission à collaborer effectivement avec le système des droits de l'homme des Nations Unies, et particulièrement avec les organes conventionnels et contribuer au suivi des recommandations sur le plan national, conformément aux dispositions de l'Observation générale « Interaction avec le système international des droits de l'homme ».

Le Sous-comité fournira le procès-verbal préparé par le secrétariat à la Commission.

3.2. Équateur: Defensoría del Pueblo

Recommandation: Le Sous-comité informe la Defensoría qu'il a l'intention de recommander au CIC son accréditation avec le **statut B** et donne à la Defensoría la possibilité de fournir, par écrit

et dans un délai d'un an dès réception de la présente notification, les preuves documentaires estimées nécessaires pour établir qu'elle n'a pas cessé de respecter les Principes de Paris. Pendant ce délai, la Defensoría garde son statut « A ».

Le Sous-comité observe encore ce qui suit:

- 1) Il se réfère à l'Observation générale « Liaison avec d'autres institutions des droits de l'homme » et rappelle que les INDH doivent coopérer avec d'autres institutions, telles que des ONG, ayant pour but la promotion et la protection des droits de l'homme.
- 2) Le Sous-comité se réfère également à l'Observation générale sur "L'interaction avec le système international des droits de l'homme", et rappelle que la Defensoría devrait en général contribuer et participer aux mécanismes des droits de l'homme et au suivi national des recommandations émanant du système international des droits de l'homme.

La réforme constitutionnelle en cours en Équateur ne devrait en aucun cas avoir des effets négatifs sur l'indépendance et l'efficacité de la Defensoría del Pueblo de l'Équateur.

Le Sous-comité fournira le procès-verbal préparé par le secrétariat à la Defensoría del Pueblo de l'Équateur.

3.3. Guatemala: Procuraduría de los Derechos Humanos de Guatemala

Recommandation: Le Sous-comité recommande que la Procuraduría soit accréditée avec le statut A.

Le Sous-comité observe ce qui suit:

- 1) Il se réfère à l'Observation générale "Interaction avec le système international des droits de l'homme".
- 2) Le Procurador ne devrait pas avoir à demander l'autorisation d'un juge pour mener à bien des enquêtes et devrait avoir un accès illimité et sans préavis à tous les locaux de l'Etat.

Bien que la loi constitutive ne prévoie pas la réélection du Procurador, le Procurador en place a été réélu pour un deuxième mandat.

3.4. Malaisie: Commission nationale des droits de l'homme de Malaisie (SUHAKAM)

Recommandation: Le Sous-comité informe la Commission qu'il a l'intention de recommander au CIC son accréditation avec le statut B, et donne à la Commission la possibilité de fournir, par écrit et dans un délai d'un an dès réception de la présente notification, les preuves documentaires estimées nécessaires pour établir qu'elle n'a pas cessé de respecter les Principes de Paris. Pendant ce délai, la Commission garde son statut « A ».

Le Sous-comité observe encore ce qui suit:

- 1) Afin de renforcer l'indépendance de la Commission, les documents constitutifs doivent prévoir un processus de nomination et de révocation clair et transparent, plus conforme aux Principes de Paris. Le Sous-comité se réfère à l'Observation générale sur la "Sélection et désignation de l'organe directeur".

- 2) Le Sous-comité observe, sur le même sujet, que le mandat des membres de la Commission est très court (deux ans) et se réfère à l'Observation générale sur la « Garantie des fonctions des membres de l'organe directeur »
- 3) Le Sous-comité se réfère à l'Observation générale " Assurer le pluralisme", et rappelle l'importance d'assurer une représentation des différents segments de la société et leur participation, en leur permettant notamment de faire des suggestions et recommander des candidatures à l'organe directeur de la Commission.
- 4) Le Sous-comité se réfère à l'Observation générale "Interaction avec le système international des droits de l'homme ".

Le Sous-comité fournira à la Commission le procès-verbal préparé par le secrétariat.

3.5. Maurice: Commission nationale des droits de l'homme

Recommandation: Le Sous-comité recommande que la Commission soit accréditée avec le statut A.

Le Sous-comité observe ce qui suit :

- 1) Le Sous-comité se réfère à l'Observation générale sur la "Sélection et désignation de l'organe directeur" et insiste sur l'importance de prévoir dans l'instrument constitutif un large processus de consultations formelles pour sélectionner et nommer les membres.
- 2) Il se réfère également à l'Observation générale sur la «Garantie des fonctions des membres de l'organe directeur» pour rappeler que des critères transparents et objectifs concernant la révocation des membres de la Commission doivent être impérativement prévus dans les instruments constitutifs légaux.
- 3) Il se réfère également à l'Observation générale sur le «Personnel détaché» pour rappeler que la loi doit être amendée afin de permettre à la Commission d'engager son propre personnel.

Le Sous-comité réexaminera ces questions lors de sa session du printemps 2010.

3.6. Niger: Commission nationale des droits de l'homme et des libertés fondamentales

Recommandation: Le Sous-comité recommande que la Commission soit accréditée avec le statut A.

Le Sous-comité observe ce qui suit:

- 1) Des ressources financières supplémentaires sont nécessaires. Il se réfère à l'Observation générale "Financement adéquat".
- 2) Le Sous-comité se réfère également à l'Observation générale : « Encourager la ratification de tous les instruments internationaux relatifs aux droits de l'homme ou l'adhésion à de tels instruments » et encourage l'inclusion de cette fonction dans la loi constitutive de l'institution nationale pour garantir efficacement la protection des droits de l'homme.
- 3) Il se réfère également à l'Observation générale sur "Interaction avec le système international des droits de l'homme".
- 4) Il demande instamment à la CNDHLF de respecter l'article 20 du décret No 99-530/PCRN/MJDH du 21 décembre 1999, en établissant les antennes régionales du CNDHLF.

3.7. Ouganda: Human Rights Commission

Recommandation: Le Sous-comité recommande que la Commission soit accréditée avec le statut A.

Le Sous-comité observe ce qui suit :

- 1) Il encourage la Commission à émettre des rapports publics sur tous les incidents délicats ou critiques qui se produisent dans le pays en matière de droits de l'homme.

3.8. Venezuela: Defensoría del Pueblo

Recommandation: Le Sous-comité recommande que la Defensoría soit accréditée avec le **statut A**.

Le Sous-comité observe ce qui suit:

- 1) Il demande instamment à la Defensoría del Pueblo de Venezuela de redoubler d'efforts pour encourager la ratification de tous les instruments internationaux relatifs aux droits de l'homme ou l'adhésion à de tels instruments et se réfère à l'Observation générale : « Encourager la ratification de tous les instruments internationaux relatifs aux droits de l'homme ou l'adhésion à de tels instruments ».
- 2) Il encourage également la Defensoría à collaborer davantage avec la société civile et se réfère à l'Observation générale : « Liaison avec d'autres institutions de droits de l'homme ».
- 3) Il encourage la Defensoría à continuer à collaborer avec le système international des droits de l'homme et insiste sur l'importance de suivre sur le plan national les recommandations émanant du système international des droits de l'homme.

3.9. Luxembourg: Commission Consultative des droits de l'homme

Le Sous-comité a convenu de renvoyer l'examen de la ré-accréditation de la Commission Consultative des droits de l'homme du Luxembourg lors de sa session d'automne 2008, en attendant l'adoption d'une nouvelle loi sur l'institution nationale. Le Sous-comité se réfère à l'Observation générale : « Sursis aux demandes de ré-accréditation ».

3.10 Suède: Ombuds- Institutions de Suède

Afin de soutenir l'effort de fusion des institutions des droits de l'homme existantes en Suède, le Sous-comité a convenu lors de sa session d'octobre 2007 de sursoir à l'examen de ré-accréditation de l'institution nationale des droits de l'homme de Suède jusqu'à la session en cours du Sous-comité. L'INDH de Suède a demandé un nouveau sursis et le Sous-comité a convenu de sursoir la requête de ré-accréditation jusqu'à sa session d'automne 2008. D'après l'Observation générale : « Sursis aux demandes de ré-accréditation », si les documents nécessaires à la ré-accréditation de l'INDH de la Suède ne parviennent pas au Sous-comité avant sa session d'automne 2008, le statut d'accréditation de l'INDH de Suède sera échu.

4. RECOMMANDATIONS SPECIFIQUES – DEMANDES DE NOUVELLE ACCREDITATION

4.1. Croatie: Ombudsman de la République de Croatie

Recommandation: Le Sous-comité recommande que l'Ombudsman soit accrédité avec le **statut A**.

Le Sous-comité observe ce qui suit:

- 1) Il rappelle qu'il est essentiel que l'Ombudsman coopère avec d'autres institutions similaires pour garantir la cohérence et l'efficacité du système national de protection de droits de l'homme.
- 2) Il se réfère à l'Observation générale sur le « Mandat des droits de l'homme » et demande instamment l'élargissement du mandat de l'Ombudsman afin d'y inclure la promotion des droits de l'homme.
- 3) Il se réfère à l'Observation générale sur le « Financement adéquat », et insiste sur l'importance de disposer de ressources suffisantes et durables pour exécuter le mandat de l'organisation.
- 4) Le Sous-comité encourage l'Ombudsman à collaborer effectivement avec le système des droits de l'homme des Nations Unies, conformément à l'Observation générale « Interaction avec le système international des droits de l'homme ».
- 5) Il se réfère en outre à l'Observation générale « Assurer le pluralisme », en particulier pour ce qui a trait aux minorités ethniques.
- 6) Il encourage l'Ombudsman à améliorer l'accessibilité de l'institution en ouvrant des bureaux régionaux, conformément à l'article 3 de son Règlement intérieur.

4.2. Maldives: Commission des droits de l'homme

Recommandation: Le Sous-comité recommande que la Commission soit accréditée avec le statut B.

Le Sous-comité observe que les documents légaux constitutifs de la Commission des droits de l'homme des Maldives stipulent que tous ses membres doivent être musulmans. Afin de pouvoir considérer que la Commission remplit les critères des Principes de Paris, le Sous-comité recommande que cette exigence soit supprimée.

Le Sous-comité observe que dans la pratique, la Commission a fait preuve d'efficacité dans l'exécution de son mandat de promotion et de protection des droits de l'homme.

Le Sous-comité observe ce qui suit:

- 1) Il se réfère l'Observation générale sur le « Mandat de droits de l'homme » et demande instamment l'élargissement du mandat de la Commission afin d'y inclure tous les droits de l'homme et les libertés fondamentales.
- 2) Il se réfère également à l'Observation générale sur la "Sélection et désignation de l'organe directeur" et sur la « Garantie des fonctions des membres de l'organe directeur » pour rappeler notamment que les instruments légaux constitutifs doivent prévoir une procédure de révocation des membres transparente et fondée.
- 3) Il encourage la Commission à collaborer effectivement avec le système des droits de l'homme des Nations Unies, conformément à l'Observation générale « Interaction avec le système international des droits de l'homme ».
- 4) Il observe que les locaux dont dispose la Commission sont insuffisants et ne lui permettent pas d'engager tout le personnel nécessaire pour remplir les nombreux postes vacants.

4.3. Timor oriental: Provedoria pour les droits de l'homme et la justice

Recommandation: Le Sous-comité recommande que la Provedoria soit accréditée avec le **statut A**.

Le Sous-comité observe ce qui suit:

- 1) Il se réfère à l'Observation générale sur le "Financement adéquat", en particulier à l'allocation de fonds servant à doter l'organisation de locaux adéquats, à améliorer progressivement ses activités et à faciliter l'exécution de son mandat ;
- 2) Il se réfère également à l'Observation générale sur les « INDH en situations de coup d'état ou d'état d'urgence », et rappelle combien il est important que la Provedoria reste vigilante et fasse preuve d'indépendance dans l'exécution de son mandat.
- 3) Il encourage la Provedoria à collaborer effectivement avec le système des droits de l'homme des Nations Unies, conformément à l'Observation générale « Interaction avec le système international des droits de l'homme ».
- 4) La Provedoria ne devrait pas être tenue de donner un préavis écrit pour inspecter ou examiner des locaux, des documents, des équipements ou des biens ou pour y avoir accès (en vertu de l'article 42 de la Loi 7/2004). La Provedoria devrait pouvoir accéder librement et sans préavis à tous les locaux publics.

4.4 Ukraine : Commissaire aux droits de l'homme du Parlement ukrainien

Recommandation: Le Sous-comité recommande que la Commission soit accréditée avec le **statut B**.

Le Sous-comité observe ce qui suit :

- 1) La Commission n'a pas respecté l'obligation de présenter son rapport annuel, comme le prévoient les conditions d'accréditation. Le rapport annuel soumis par la Commission au Sous-comité est celui de l'année 2004
- 2) La Commission n'a pas respecté l'obligation de soumettre une copie de son budget annuel, comme le prévoient les conditions d'accréditation. Le Sous-comité se réfère à l'Observation générale « Procédure de demande », notamment le paragraphe c).
- 3) Il se réfère également à l'Observation générale « Interaction avec le système international des droits de l'homme » et insiste particulièrement sur l'importance de collaborer pleinement et de manière indépendante avec les organes conventionnels.
- 4) Il se réfère également à l'Observation générale "Sélection et désignation de l'organe directeur" et à l'Observation générale « Assurer le pluralisme » pour que les forces sociales (la société civile) soient également partie prenante au processus.

4.5 Grande Bretagne: Commission pour les droits de l'homme et l'équité

Recommandation : Le Sous-comité a convenu de sursoir à l'examen de la demande d'accréditation de la Commission jusqu'à sa session du printemps 2009.

La Commission pour les droits de l'homme et l'équité a été créée en octobre 2007 et fonctionne depuis six mois, de sorte qu'il n'a pas été possible, pour la présente session, de déterminer son efficacité et sa conformité aux Principes de Paris.

Le Sous-comité se réfère également à l'Observation générale « Plus d'une institution nationale dans un Etat », élaborée par le Secrétariat pendant la session d'avril 2008.

Le Sous-comité fournira le procès-verbal préparé par le Secrétariat pour l'égalité et la Commission des droits de l'homme.

ANNEX 1

SOUS-COMITE D'ACCREDITATION DU CIC

OBSERVATIONS GENERALES

1. Compétences et attributions

1.1 Création des institutions nationales: Les INDH doivent être créées par un texte constitutionnel ou légal. La création au moyen d'un acte du pouvoir exécutif n'est pas adéquate pour assurer la pérennité et l'indépendance.

1.2 Mandat de droits de l'homme: Toutes les INDH doivent avoir un mandat contenant des fonctions spécifiques tant de protection que de promotion des droits de l'homme, comme celles qui figurent dans les Principes de Paris.

1.3 Encourager la ratification de tous les instruments internationaux relatifs aux droits de l'homme ou l'adhésion à de tels instruments; Le Sous-comité interprète que la fonction d'encouragement de la ratification des instruments internationaux des droits de l'homme ou de l'adhésion à ces instruments, prévue dans les Principes de Paris, est une fonction clé de toute institution nationale. Partant, le Sous-comité encourage l'inclusion de cette fonction dans la législation relative à l'institution nationale, afin d'assurer la meilleure protection possible des droits de l'homme dans le pays en question.

1.4 Interaction avec le système international des droits de l'homme: Le Sous-comité aimerait insister sur l'importance que les INDH collaborent avec le système international de protection des droits de l'homme, notamment le Conseil des droits de l'homme et ses mécanismes (Détenueurs de mandat au titre des procédures spéciales) et les organes conventionnels relatifs aux droits de l'homme des Nations Unies. Cela signifie d'une manière générale pour les INDH collaborer avec ces mécanismes des droits de l'homme et d'y participer, ainsi qu'assurer le suivi au niveau national des recommandations résultant du système international de protection des droits de l'homme. De surcroît, les INDH devraient aussi collaborer activement avec le CIC et le Bureau de son Sous-comité d'accréditation, ainsi qu'avec les organes régionaux de coordination des INDH

1.5 Liaison avec d'autres institutions des droits de l'homme: Les INDH devraient collaborer avec d'autres institutions officielles et d'autres institutions telles des ONG, créées dans le but de promouvoir et protéger les droits de l'homme, et devraient démontrer que tel est le cas dans leurs demandes au Sous-comité du CIC.

2. Composition et garanties d'indépendance et de pluralisme

2.1 Assurer le pluralisme: Le Sous-comité observe qu'il y a diverses manières de s'assurer que

l'exigence de pluralisme prévue dans les Principes de Paris est respectée. Néanmoins, le Sous-comité insiste sur l'importance que les institutions nationales entretiennent des relations régulières avec la société civile et observe que cela est pris en considération lors de l'évaluation des demandes d'accréditation.

Le Sous-comité observe qu'il y a diverses manières d'assurer le pluralisme grâce à la composition de l'institution nationale; par exemple:

- a) Les membres de l'organe directeur représentent divers groupes de la société, ainsi que cela est mentionné dans les Principes de Paris;
- b) Pluralisme au moyen de procédures de désignation de l'organe directeur de l'institution nationale, par exemple lorsque divers groupes de la société suggèrent ou recommandent des candidats;
- c) Pluralisme au moyen de procédures permettant une coopération réelle avec divers groupes de la société, par exemple des comités de conseil, des réseaux, des consultations ou des forums publics; ou
- d) Pluralisme au moyen de divers membres du personnel représentant des groupes différents de la société.

Le Sous-comité insiste de surcroît pour que le principe du pluralisme assure une participation significative des femmes au sein de l'institution nationale.

2.2 Sélection et désignation de l'organe directeur: Le Sous-comité observe l'importance capitale de la procédure de sélection et désignation de l'organe directeur pour assurer le pluralisme et l'indépendance de l'institution nationale. Le Sous-comité insiste en particulier sur les facteurs suivants:

- a) Une procédure transparente
 - b) Une large consultation tout au long de la procédure de sélection et de désignation
 - c) Une large publicité des postes vacants
 - d) La maximisation du nombre de candidats potentiels, provenant d'un large ensemble de groupes de la société
- a) La sélection des membres à titre personnel plutôt qu'au nom de l'organisation qu'ils représentent.

2.3 Représentants gouvernementaux dans les institutions nationales: Le Sous-comité entend que les Principes de Paris exigent que les représentants gouvernementaux dans les organes directeurs ou consultatifs des institutions nationales n'aient pas de pouvoir de décision ni de vote

2.4 Personnel détaché: Afin de garantir l'indépendance de l'INDH, le Sous-comité observe ce qui suit, au titre des bonnes pratiques:

- a) Les postes de niveau supérieur ne devraient pas être remplis par du personnel détaché;
- b) Le niveau du personnel détaché ne devrait pas dépasser 25% et n'être en aucun cas supérieur à 50% du personnel de l'INDH.

2.5 Immunité: Il est fortement recommandé d'inclure dans le droit national des dispositions visant à protéger la responsabilité de l'INDH en cas d'actions menées en cette qualité officielle.

2.6 Financement adéquat: La fourniture d'un financement adéquat par l'Etat doit comprendre au minimum:

- a) l'attribution de fonds destinés à une installation adéquate, soit au moins un siège;
- b) des salaires et des avantages sociaux pour son personnel comparables aux salaires et conditions d'emploi du service public;
- c) le cas échéant, la rémunération des commissaires; et
- d) la mise en place de systèmes de communications comprenant le téléphone et l'Internet.

Un financement adéquat devrait permettre dans des limites raisonnables l'amélioration graduelle et progressive des activités de l'organisation et l'exécution de son mandat.

Le financement par des sources extérieures, par exemple des partenaires de développement, ne doit pas représenter l'essentiel du financement d'une INDH, puisque l'Etat a la responsabilité d'assurer un budget opérationnel minimum, afin que l'INDH puisse agir de manière à respecter son mandat.

Les systèmes financiers doivent être tels que l'INDH jouisse d'une autonomie financière absolue. Ce système devrait consister en une ligne budgétaire séparée sur laquelle l'INDH dispose d'un droit de gestion et de disposition total.

2.7 Personnel d'une INDH: En principe, les INDH doivent avoir le pouvoir de désigner leur propre personnel.

2.8 Membres à plein temps:

Les INDH devraient comprendre des membres à plein temps rémunérés, afin de:

- a) Assurer l'indépendance des INDH par rapport à des conflits d'intérêts réels ou perçus;
- b) Assurer un mandat stable aux membres;
- c) Assurer une exécution permanente et efficace du mandat de l'INDH.

2.9 Garantie des fonctions des membres de l'organe directeur

Il convient d'inclure dans la législation relative aux INDH des dispositions relatives à la révocation des membres de l'organe directeur conformes aux Principes de Paris.

- a) La révocation ou la démission forcée d'un membre peut entraîner un examen spécial du statut de l'INDH.
- b) La révocation doit être strictement conforme à toutes les exigences de fond et de procédure contenues dans la loi;
- c) La révocation fondée uniquement sur la discrétion des autorités de nomination ne devrait pas être possible.

3. Modalités de fonctionnement

4. Principes complémentaires concernant le statut des commissions ayant des compétences à caractère quasi juridictionnel

5. Questions supplémentaires

5.1 INDH en situations de coup d'état ou d'état d'urgence: Par principe, le Sous-comité s'attend à ce que, en situation de coup d'état ou d'état d'urgence, une INDH se conduise avec un niveau de vigilance et d'indépendance élevé dans l'exercice de son mandat.

5.2 Restriction du pouvoir des institutions nationales pour des raisons de sécurité nationale: Le Sous-comité observe que la portée du mandat de maintes institutions nationales est restreinte pour des motifs de sécurité nationale. Alors que cette tendance n'est pas contraire par essence aux Principes de Paris, l'on observe qu'il faut s'assurer qu'une telle restriction n'est pas déraisonnablement ou arbitrairement appliquée et qu'elle est exercée en suivant le principe de la légalité.

6. Questions de procédure

6.1 Procédure de demande: Du fait de l'intérêt croissant pour la création d'institutions nationales et la mise en place d'un processus de ré-accréditation quinquennal, le volume des demandes à examiner par le Sous-comité a fortement augmenté. Afin d'assurer un processus d'accréditation efficace, le Sous-comité insiste sur les exigences suivantes:

- a) Les délais pour les demandes doivent être strictement respectés;
- b) Lorsque le délai de demande de ré-accréditation n'est pas tenu, le Sous-comité recommande que le statut de l'institution nationale soit suspendu jusqu'à l'examen de la demande à la prochaine réunion;
- c) Le Sous-comité effectue les évaluations sur la base des documents reçus. Des demandes incomplètes peuvent affecter la recommandation relative au statut de l'institution nationale;
- d) Les requérants doivent fournir les documents sous leur forme officielle ou publiée (par exemple des lois publiées ou des rapports annuels publiés) et non des documents analytiques secondaires;
- e) Les documents doivent être soumis sous forme papier et électroniquement;
- f) Toute la documentation relative à une demande doit être envoyée au secrétariat du CIC, au Haut Commissariat des Nations Unies aux droits de l'homme, à l'adresse suivante: Unité des institutions nationales, Haut Commissariat des Nations Unies aux droits de l'homme, CH-1211 Genève 10, Suisse, ainsi que par courriel à: nationalinstitutions@ohchr.org; et
- g) Il est de la responsabilité du requérant de s'assurer que la correspondance et les documents de la demande ont été reçus au secrétariat du CIC.

6.2 Sursis aux demandes de ré-accréditation: Le Sous-comité applique la politique suivante en matière de sursis aux demandes de ré-accréditation:

- a) Si une institution demande le sursis à l'examen de sa demande de ré-accréditation, il n'est possible d'accorder ce sursis que si des justifications écrites du sursis ont été fournies et si, de l'avis du président du CIC, ces justifications sont convaincantes et exceptionnelles;
- b) Les demandes de ré-accréditation ne peuvent être renvoyées que d'une année au maximum et, à l'issue de ce délai, le statut de l'INDH expire.

- c) L'accréditation des INDH dont les demandes de ré-accréditation sont reçues après la date fixée ou qui n'ont pas présenté de demande, est suspendue. Cette suspension peut durer jusqu'à une année; pendant ce délai l'INDH peut présenter sa demande de ré-accréditation. Si la demande n'est pas présentée dans ce délai, l'accréditation expire.

6.3 INDH sous examen: Conformément à l'article 3(g) du règlement intérieur du CIC, le président du CIC ou le Sous-comité peuvent lancer un examen de l'accréditation d'une INDH s'il apparaît que la situation de cette INDH aurait pu changer d'une manière qui affecte son respect des Principes de Paris. Cet examen est déclenché par un ensemble exceptionnel de circonstances considérées provisoires par nature. En conséquence, la procédure normale de re-accréditation est renvoyée à la fin de l'examen.

Lorsqu'il évalue les INDH sous examen, le Sous-comité applique la procédure suivante:

- a) Une INDH ne peut être sous examen que pendant une année et demie au maximum et, pendant ce temps, elle peut fournir des informations au Sous-comité afin de démontrer que, dans les domaines sous examen, elle respecte totalement les Principes de Paris;
- b) Pendant la période d'examen, tous les privilèges associés au statut existant de l'INDH demeurent en place;
- c) A l'issue de la période d'examen, si les préoccupations du Sous-comité n'ont pas été réglées, le statut de l'INDH expire.

6.4 Suspension de l'accréditation: Le Sous-comité observe que la suspension signifie que l'accréditation de la Commission est temporairement suspendue jusqu'à la fourniture d'informations au Sous-comité pour démontrer que, dans les domaines sous examen, elle respecte totalement les Principes de Paris. Une INDH avec un statut A suspendu n'a pas droit aux bénéfices de l'accréditation avec statut A, dont le droit de vote auprès du CIC ni le droit de participation au Conseil des droits de l'homme, jusqu'à la levée de la suspension ou au changement de statut de l'INDH.

6.5 Présentation d'informations: Les présentations d'informations ne sont acceptés qu'en format papier ou électronique. La Déclaration de respect des Principes de Paris est la composante essentielle de la demande. Les documents destinés à appuyer ou fonder les affirmations faites dans cette déclaration doivent être présentées en original, de sorte que les affirmations puissent être validées et confirmées par le Sous-comité. Aucune affirmation n'est acceptée sans justificatifs.

De surcroît, lorsqu'une demande suit une recommandation antérieure du Sous-comité, celle demande doit traiter directement des commentaires faits et ne doit pas être présentée si toutes les questions n'ont pas été traitées.

Adopté par le Comité International de Coordination des Institutions Nationales de Promotion et de Protection des Droits de l'Homme (CIC) pendant sa 20^{ème} session à Genève, 14 - 18 Avril 2008.

Genève, Avril 2008

ANNEXE 2:

Observations générales élaborées par le Sous-comité lors de sa session d'avril 2008

Plus d'une institution nationale dans un Etat:

Le Sous-comité voit d'un bon œil et encourage la mise en place progressive d'un système fort de protection des droits de l'homme dans un Etat grâce à une institution des droits de l'homme consolidée et globale.

Dans des circonstances exceptionnelles, lorsque plus d'une institution nationale demande une accréditation auprès du CIC, il convient de remarquer que la règle 3 b) du règlement intérieur du CIC ne prévoit qu'un seul droit de vote et un seul droit de parole par pays et que seule une institution est éligible en tant que membre du bureau.

Le cas échéant, les exigences à remplir pour que le Sous-comité examine une telle requête sont les suivantes :

- 1) Le consentement écrit du gouvernement de l'Etat (qui doit, pour sa part, être membre des Nations Unies).
- 2) Un accord écrit conclu entre toutes les institutions nationales des droits de l'homme concernées sur les droits et les devoirs des membres du CIC, y compris l'exercice d'un seul droit de parole et une seule voix. L'accord doit inclure également les modalités prévues pour participer au système international de droits de l'homme, y compris le Conseil des droits de l'homme et les organes conventionnels de traités.

Le Sous-comité insiste sur le caractère obligatoire des exigences susmentionnées pour que la requête puisse être examinée.

ANNEXE 3

Observation générale révisée par le Sous-comité lors de sa session d'avril 2008

1.5 Liaison avec d'autres institutions des droits de l'homme: Les INDH devraient collaborer étroitement et échanger des informations avec d'autres institutions statutaires, créées également dans le but de promouvoir et protéger les droits de l'homme, par exemple au niveau de l'Etat ou sur des questions thématiques, ainsi qu'avec d'autres organisations, telles que des ONG, qui œuvrent dans le domaine des droits de l'homme, et devraient démontrer cette collaboration dans leurs demandes au Sous-comité du CIC.

ANNEXE 4

Guide à l'intention du Sous-comité d'accréditation pour l'application des observations générales

Parmi les institutions qui demandent, soit une première accréditation, soit un ré-accréditation, comme INDH de statut A, certaines travaillent dans des circonstances sociales, politiques et économiques difficiles. Tel est le cas notamment dans les pays qui sortent d'un conflit, ou ceux où les structures internationales des droits de l'homme ne jouissent pas de l'acceptation générale. Dans de telles circonstances, exceptionnelles, il peut ne pas être possible à une institution de respecter pleinement les Principes de Paris.

Voilà pourquoi, lorsque le Sous-comité évalue des institutions en vue de leur accréditation ou ré-accréditation, il devrait prendre en considération les circonstances dans lesquelles l'institution doit travailler et devrait faire preuve de souplesse à l'heure d'appliquer les observations générales, en tenant compte, d'une part, des principes d'inclusivité et de diversité et, d'autre part, du besoin de faire respecter les normes.

Ce genre de situation se produit parfois avec les institutions qui dépendent dans une large mesure de bailleurs de fonds internationaux, plutôt que de l'Etat, ou encore lorsque la couverture géographique d'une institution se limite à une partie seulement du territoire national. Si la situation n'évolue que peu ou pas du tout depuis le moment de la demande initiale d'accréditation, elle peut être encore être prise en compte lors de la demande de ré-accréditation.

Pour obtenir le statut A, une institution doit, dans toute la mesure du possible, respecter tous les Principes de Paris. Au moment de l'examen, le Sous-comité du CIC devrait tenir compte de la situation prévalant dans le contexte local, afin d'admettre parmi ses membres des institutions qui travaillent dans des circonstances difficiles, et ce avec un statut A. Une telle mesure

- permet à l'institution concernée de bénéficier du soutien et de l'engagement international, d'apprendre des autres et de se développer ;
- permet à l'institution concernée de jouir du statut et du soutien des Nations Unies ;
- contribue à la diversité du CIC ;
- encourage la création de nouvelles INDH, ce qui fait partie des fonctions du CIC

ANNEXE 5 (Uniquement disponible en anglais pour l'instant)

**DECISION PAPER
ON THE REVIEW OF ICC ACCREDITATION PROCEDURES FOR
NATIONAL HUMAN RIGHTS INSTITUTIONS (NHRI)**

March 2008

**Submitted by the
ICC WORKING GROUP ON ACCREDITATION**

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Background

At the 17th session of its Annual Meeting, held on 12 April 2006, the International Coordinating Committee of National Human Rights Institutions for the Protection and Promotion of Human Rights (ICC) established a Working Group to examine the process used to accredit National Human Rights Institutions (NIs) as members of the International Group of National Human Rights Institutions and to develop a discussion paper for the ICC on the matter. The request was prompted primarily by three factors: (i) a sense that the current process could be clearer and more rigorous both with regard to the process itself and the basis on which recommendations were being made and decisions taken; (ii) the growing role of NIs in the international arena and the corresponding need to ensure that they were truly legitimate; and, (iii) the requirement to periodically review the accreditation accorded Institutions in the past.

Working Group Membership

The Working Group, whose members were also the members of the ICC Sub-Committee on Accreditation at the time (National Institutions from Canada, Denmark, Fiji and Nigeria and representatives from the OHCHR National Institutions Unit, and in October 2007, included NIs from Germany, Korea and Rwanda), developed a discussion paper examining three areas:

1. The composition of the Sub-Committee and its roles and responsibilities;
2. The accreditation process; and
3. The substance of criteria or minimum standards set for accreditation.

Discussion Paper

The discussion paper specifically addressed the accreditation process as it applied to both the initial application process and the process of re-accreditation. Other potential situations that may involve the Sub-Committee on Accreditation - considering re-applications for accreditation by institutions denied accreditation (existing Rule 3(f) of the ICC Rules of Procedure), reviewing accreditation upon notification of a change of situation (existing Rule 3(g) of the ICC Rules of Procedure) or reviewing accreditation as part of an “early warning” process - were not directly examined, although the comments made in the paper might apply generally to those circumstances as well.

Presentation to the ICC

The paper was presented at the 18th and 19th Sessions of the Annual Meeting of the ICC. In addition, members were asked to provide further comments in writing with the view towards developing a final paper for presentation and adoption at the next ICC meeting.

Challenges to Adverse Accreditation Recommendations

In addition, and in response to comments made at the 19th Session, the Working Group has examined the issues of: 1) including a mechanism to challenge adverse accreditation recommendations within the accreditation process; and, 2) the status that should be accorded Institutions during the period that their accreditation status is being reviewed or a recommendations on it is being challenged.

Decision Paper

The attached decision paper, which is to be presented to the ICC at the 20th Session of its Annual Meeting for adoption, sets out the consensus arrived at by the Working Group in full consideration of the comments made by members at the 18th and 19th Sessions, as well as written comments received subsequent to them. The Working Group recommends the proposals put forward in the paper be adopted. To facilitate this, the paper includes proposed wording whenever recommendations for amendments to the ICC Rules of Procedure and/or the Rules of Procedure for the Sub-Committee on Accreditation are made. To aid in decision-making, the Working Group attaches, as Annex I and Annex II respectively, copies of the above-mentioned Rules of Procedure with all proposed amendments highlighted.

Part I: A Principled Approach

According to rule 3(a) of the ICC Rules of Procedure, to be a member of the International Group of National Human Rights Institutions, a National Human Rights Institution must conform to the *Paris Principles*. The Rules of Procedure give the Sub-Committee on Accreditation the responsibility to make recommendations as to whether applicant institutions satisfy the criteria set out in the *Paris Principles*. In 2004, the ICC adopted Rules of Procedure for the Sub-Committee on Accreditation to clarify the composition, functions and procedures to be followed by the Sub-Committee in carrying out their mandate.

Guidelines for Accreditation Process

However, neither set of Rules specifies exactly how the Sub-Committee is to come to its recommendation. Nor do the Rules provide guidance on the basis for determining whether an applicant Institution conforms or not to the *Paris Principles*. In the absence of clear guidelines, the Sub-committee, with the support of the National Institutions Unit of the OHCHR, has been left to develop its own understanding of the *Paris Principles* and how to apply these guidelines in the accreditation process.

Evolving Role of NIs

The principle purpose of the ICC, as reflected in the Preamble to its Rules of Procedure, remains: “the creation and strengthening of National Human Rights Institutions which are in conformity with the *Paris Principles*”. The ICC has been very successful in achieving this objective and furthermore, an increasing number of Institutions have joined and benefited from interacting with the 16 voting members of the ICC. However, the environment in which National Human Rights Institutions function has evolved since the adoption of the *Paris Principles* in 1991 and the creation of the ICC. Membership in the Group is given growing importance by international and national actors.

NIs in UN Human Rights Fora

In particular, accreditation as a fully compliant member allows for the participation by that National Human Rights Institution in UN human rights related fora. Since the 1993 Vienna World Conference on Human Rights, National Institutions have increasingly played a meaningful role at the UN. In recent years, for example, National Institutions have played a key role in the development of the UN Convention on the Protection and Promotion of the Rights of Persons with Disabilities, and possess a prominent role as a national implementation and monitoring body. Similarly, National Institutions played a role in the development of the Optional Protocol to the Conventional Against Torture, and may play a role as “national preventative mechanisms” provided for in the Optional Protocol, providing that the NI satisfies the *Paris Principles*. Furthermore, the creation of the UN Human Rights Council allows for ICC-accredited NIs to play an active role in that forum.

Renewed Accreditation Process

In light of the changing role of National Institutions, and in order to remain true to its original purpose, it is paramount that the ICC reviews its accreditation process, with a view to strengthening the credibility and efficiency of the process, as well as that of its inherent fairness. With this in mind, the Working Group recommends that a new accreditation process be developed. To ensure that the process

is fair and impartial, and that it satisfies the principles of natural justice, the Working Group recommends that it be based on the following three guiding principles:

1. Transparency
2. Rigour
3. Independence

Transparency

Transparency requires, *inter alia*, that an applicant Institution fully understand both the standards it must meet and the documentation it must provide to support an application, know how these documents will be assessed, and, if denied full accreditation, be informed fully in writing of the reasons for this and be given the opportunity to demonstrate, by providing additional written documentary evidence, that the basis for a decision was incorrect. Transparency and fairness also require that an Institution in risk of losing its membership status have the opportunity to provide written evidence to demonstrate that it remains in compliance with the *Paris Principles*. Finally, transparency requires that the ICC and the Sub-Committee be able to demonstrate that, in coming to their recommendations and decisions, the same standards are applied to all applicant Institutions, and that those standards are applied consistently and in accordance with shared, accepted definitions and understandings.

Rigour

A more rigorous process would mean that only applicant Institutions which conform to both the letter and the spirit of the Paris Principles, and demonstrate this through their actions, will be accredited, and that the methodology used to arrive at this decision is defined, supported by sound policy decisions and applied consistently and precisely.

Independence

An independent process would be one in which there is a clear delineation of roles, responsibilities and accountability for both the ICC as a whole and Sub-Committee with regard to the accreditation process, decision-making authority and the ability to address broader policy issues. Neither members of the Sub-Committee nor members of the ICC should have a bias or a perceived bias in the outcome of any decision, nor should they, except based on the written documentation on hand, attempt to influence the decision one way or another.

The application of each of these principles will ensure that the process is fair and reasonable. As such, this “principled approach” has guided the development of this discussion paper and is supported by the various proposals therein.

Part II: The Composition of the Sub-Committee; Roles and Responsibilities

Issue 1: General roles and responsibilities: ownership of the accreditation process; decision-making authority; policy-making role.

The Working Group recommends that the accreditation process remain the responsibility of the ICC, generally, and of the Sub-Committee, in particular. The role of the ICC should be to determine policy and take the ultimate decision on accreditation; the role of the Sub-Committee should be to apply that policy and, on that basis, make a principled recommendation to the ICC on the decision to be taken.

In practice, this means that the Sub-Committee will, in any case that raises novel issues, refer the matter to the ICC for a policy decision. It will also mean that a decision to alter a Sub-Committee recommendation will have to be documented to set out the specific reasons for doing so in order to preserve transparency, rigor and independence, support fairness in the process and ensure a collective understanding of how to interpret the policy issues at play. Finally, the principles of transparency and rigour, and ultimately the fairness of the process, suggests that all decisions should be based on written documentary evidence.

Proposed Action

To ensure that the process, as described above, is transparent and rigorous, the Working Group recommends that the Sub-Committee Rules of Procedure be amended.

1. An additional sub-rule should be included under “4. Procedures” of the Sub-Committee Rules as follows:

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 for determination and guidance. An ultimate decision as to accreditation can only be taken once the ICC has provided that decision or guidance.

2. Existing Rule 6.2 of the Sub-Committee Rules should be amended as follows:

6.2. The ICC Chairperson will indicate in the report of the meeting decisions taken by ICC members with regards to applications for accreditation; in the event the ICC takes a decision contrary to the recommendation of the Sub-Committee, the ICC Chairperson will indicate the reasons for this in that report.

3. Existing Rule 3(d) [3(e) as it appears in Annex 1] of the ICC Rules of Procedure should be amended to read:

3(e). All questions of membership, including whether a National Institution complies with the Paris Principles, shall be decided by the ICC or any membership sub-committee it may establish on the basis of written documentary evidence submitted.

Issue 2: Make-up and terms of office of Sub-Committee members

There is agreement among the Working Group members and the members at large that the current process of selecting Sub-Committee members is appropriate, as is the decision to have balanced regional representation.

There is agreement among Group Members and the members at large that the term of office for Sub-Committee members should be lengthened. In keeping with the amendment to the terms of office of the Chair and Vice-Chair of the ICC, the Working Group proposes that they be lengthened to three years. The Working Group acknowledges that for particular regions it is the Chair of the regional network of NHRIs that assumes the representative position of that region on the Sub-Committee. To avoid differences in the rotational cycles of the Chairs of Networks, a regional representative should be chosen to sit on the Sub-Committee that is not the Chair of the Network. This is because where the term of office of the Chair of a particular regional network of NHRIs is shorter than the term of office of the member of the Sub-Committee, that is, three years, then it is in the best interests of the Sub-Committee that a NHRI from the region concerned, other than the regional network's Chair, represent that region on the Sub-Committee so they may commit to an uninterrupted term of three years on the Sub-Committee. The Working Group, with the support of other members, also recommends that the membership of the Sub-committee be staggered so that there would always be at least two members of the Sub-Committee holding office with experience at any one time.

Finally, the Working Group members believe that there is a consensus that the Chair of the Sub-Committee should rotate automatically between regions. The Sub-Committee notes, however, the possibility that a regional representative on the Sub-Committee might not feel it has the capacity to assume the obligations of chairing the Sub-Committee when the position comes to it on rotation. It was felt that in such an eventuality the Institution should not be disqualified from serving on the Sub-Committee. For this reason, the Sub-Committee recommends that the Chair pass to the next region on rotation in the event that the serving regional representative does not want the responsibility.

Proposed Action

4. With regard to the lengthened term of office, the Working Group recommends that Rule 2.2 of the Rules of Procedure for the Sub-Committee be amended as follows:

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

5. With regard to a fixed rotational Chair of the Sub-Committee, an amendment to the Committee Rules of Procedure is necessary. The Working Group proposes that rule 2.3 of the Rules of Procedure of the Sub-Committee be amended as follows:

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.

Part III: The Accreditation Process

Issue 3: Documents supporting accreditation

The Working Group believes that the documentation currently supplied to support the accreditation process - the accreditation grid with supporting documents - is insufficient to allow the Sub-Committee to make a reasoned decision as to the compliance of the Institution with the *Paris Principles*. The Working Group recommends that:

- A clearer normative framework be put in place to determine compliance, as discussed later in this paper;
- The accreditation grid be revised to make it more focused and directive; and
- A directive guide be developed to explain more clearly to Institutions the application process and what documentation is required to support it.

Previously regional representatives were the conduit through which applications were transmitted. This has changed and applicant Institutions now submit their applications and documentation directly to the ICC Secretariat. Members of the Working Group recommend the current practice be retained, but that there be flexibility in the Rules of the Sub-Committee to encourage and allow regional support where this is desirable and possible.

Proposed Action

6. The Working Group believes that the Sub-Committee and the ICC Secretariat should be mandated to review and revise the accreditation grid to make it, and the required supporting documentary, more explicit. This should be done by October 2008.
7. The Working Group also believes that the Sub-Committee and the Secretariat should be mandated to develop a prototype directive guide for applicant Institutions to be submitted to the ICC for approval at its 20th Annual Meeting.
8. The Working Group believes that the Rules of Procedure for the Sub-Committee (existing rules 3.1 and 3.2) relating to the role of the regional representative in facilitating applicant Institutions should remain as they are. To the extent that regional representatives can assist and support applicant Institutions in their region through the process, this should be encouraged.
9. The Working Group notes that the current ICC Rules of Procedure are silent on the use of the accreditation grid and proposes that the last bullet of existing rule 3(c) be amended to read as follows:

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

Issue 4: Sub-Committee meeting schedules and related issues

The Sub-Committee traditionally meets at the same time of the ICC Annual Meetings. This provides a focus to the process, sets an identifiable target date by which Institutions are supposed to submit their applications and ensures that members, and the ICC Secretariat, are in the same place at the same time without requiring additional arrangements. It speeds up decision-making since the ICC is assembled.

Given the pressures imposed on the Sub-Committee by the introduction of the re-accreditation process, the Sub-Committee decided in October 2006 to review applications more often, as is provided for in existing rule 4.3 of the Sub-Committee Rules of Procedure. The Sub-Committee currently meets at ICC meetings as well as approximately mid-point between scheduled ICC meetings. With respect to the increased frequency of Sub-Committee meetings, the Working Group acknowledges the increased burden on the Secretariat and the travel expenses of the Sub-Committee members. However, the Working Group believes that their experiences should be considered a pilot and be subjected to a review after the initial re-accreditation processes is over to determine whether the practice should continue. In the interim, expenses may be defrayed by the use of teleconference technologies.

While only the ICC can make the final decision on the applications, the process of twice-yearly meetings is expected to help ensure that the Sub-Committee has the time to reflect on the applications submitted and come to more principled recommendations. The recommendations reached during Sub-Committee meetings held independently of the ICC Annual Meeting shall be communicated to the 16 voting members of the ICC for their consideration.

The Working Group notes the decision taken by members at the 18th Session of the Annual Meeting of the ICC, reiterated in the Sub-Committee's General Comments at its 19th Session, to require applications for accreditation to be submitted three (3) months in advance prior to the meeting of the Sub-Committee. It also notes the members' support for applying this requirement with rigour.

Proposed Action

10. The ICC should instruct the Sub-Committee to develop a paper on its experiences with holding meetings outside of the ICC meeting schedule for discussion and decision by the ICC as to whether the process should continue. The paper should consider the costs involved and the strains put on the Secretariat.
11. In order to codify members' desire for a lengthier lead-in time for applications and to put greater emphasis on the importance of meeting this deadline, the Working Group recommends that existing rule 3.4 of the Sub-Committee Rules of Procedure be changed to read as follows:

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 so that they can be passed on to the ICC Chairperson no later than one (1) month prior to the meeting of the Sub-Committee. Subject to paragraph 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.

12. In order to ensure greater flexibility as to the schedule that applies to Sub-Committee meetings, and to ensure that exceptions to the requirement to provide documentation promptly are not abused, the Working Group recommends that existing rule 3.5 of the Sub-Committee Rules of Procedure be amended as follows:

3.5. Applications and documents submitted after this delay 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.

Issue 5: Accreditation categories

The Working Group recommends: (i) revising the current categories of ICC membership by deleting the A(R) (accreditation with reserve) category; (ii) making the link between an A-status classification and membership in the Group of National Institutions more explicit; and, (iii) establishing an interim process to deal with NIs currently accredited as A(R) Institutions.

The Working Group notes that B-status Institutions are referred to as having Observer Status. The existing rule 3(f) [3(i) as it appears in Annex 1], however, suggests that any Institution with less than A-status can attend meetings as observers only with the consent of the ICC. The Working Group proposes that B-status institutions have automatic observer privileges and that C-status Institutions be allowed observer status with the consent of the ICC.

The Sub-Committee further notes that should this formulation be accepted, and if it is determined that B-status institutions are to face re-accreditation and review, then, they be treated, as regards the privilege of automatic observer status, as A-status Institutions who lose their privileges in defined circumstances addressed under Issue 9.

Some members believe that certain applicant Institutions might be so wide off the mark, i.e. their mandate maintains or supports religious, gender or ethnic intolerance, that they should not even be considered as potential ‘observers’. This could be accomplished within the existing ICC Rules, since existing Rule 3(f) [3(i) as it appears in Annex 1] provides that non-members can only participate at ICC meetings or workshops “with the consent of the ICC”.

Proposed Action

13. The Working Group recommends that rule 5 of the Rules of Procedure of the Sub-Committee be amended as follows:

5. In accordance with the *Paris Principles* and the ICC Rules of Procedure, the different classifications used by the Committee are:

A: Voting Member: In compliance with each of the Paris Principles;

B: Observer Status: Not in compliance with each of the Paris Principles or insufficient information provided to make a determination;

C: No Status: Non-compliant with the Paris Principles.

14. The Working Group also recommends that existing rule 3(a) of the ICC Rules of Procedure be amended to make the requirement of ‘full compliance’ more specific as follows:

3(a). Only National Institutions which comply fully with the Paris Principles shall be eligible to be voting members of the group of National Institutions.

15. The Working Group recommends that existing rule 3(f) [3(h) and 3(i) as it appears in Annex 1] of the ICC Rules of Procedure should be replaced with the following rules:

3(h). Any National Institution whose application for membership has been declined may reapply for membership at any time.

3(i). A National Human Rights Institution that is granted Observer Status has the right to participate as an observer in open meetings and workshops of the ICC; an Institution denied A or B status may, with the consent of the ICC, attend meetings or workshops of the group as an observer.

Issue 6: The re-accreditation process

Re-accreditation is understood as a mechanism to ensure that fully compliant Institutions continue to conform to the *Paris Principles* over time. Currently, only A-status Institutions face re-accreditation. However, it is recommended that B-status Institutions (given Observer Status) should also be subject to re-accreditation as such an exercise would serve to encourage such institutions to demonstrate the efforts undertaken towards achieving full compliance with the *Paris Principles*.

The Working Group notes that the process used for accreditation and re-accreditation needs to be made more rigorous by reviewing and possibly modifying the normative framework used for this purpose. If the modalities are made more rigorous at a later date, those institutions that have been accredited using existing, less rigorous mechanisms will be subject to review when they come up for re-accreditation again or, if necessary in the circumstances, by using the processes provided under existing rules 3(f) & (g) [3(h), (i) & (j) as they appear in Annex 1] of the ICC Rules of Procedure.

The Sub-Committee, in section 6.1 of its General Observations³, delivered to the 19th Session of the Annual Meeting of the ICC, recommended a process for handling the deferral of re-accreditation. It recommended that deferrals only be allowed on receipt of a written request and then only if in the view of the ICC Chairperson the justifications provided are “compelling and exceptional”. It also set a time limit of one year for the deferral after which, if the application and required documentation are not submitted, the Institution would be suspended. Finally, it indicated that re-accreditation applicants that do not apply and submit their application in time or at all will be suspended for up to one year; if the

³ Please see Issue 10 for a discussion on Sub-Committee General Observations.

application is not submitted within this time frame, the institution's accreditation status will lapse. The question of the status of members is discussed in Issue 9.

Finally, there is a consensus that the ICC Rules of Procedure must be amended to reflect the re-accreditation process.

Proposed Action

16. The Working Group recommends the ICC consider the possibility of enlarging the focus of the re-accreditation process to include B-status Institutions.
17. The Working Group recommends that no change be made to allow a review of accreditation and re-accreditation decisions where a new normative framework is put in place. An Institution denied membership may, under existing rule 3(f) [3(h) as it appears in Annex 1], reapply for membership at any time and can do so if it believes the application of new normative standards would result in a change in membership status. Institutions deemed members using existing processes that, in the opinion of the Chair of the ICC or of any Sub-Committee member, might not remain as members if the new standards were to apply, can have their status reviewed under the provisions of existing rule 3(g) [3(j) as it appears in Annex 1] of the ICC Rules of Procedure.
18. The ICC Rules of Procedure should be amended to codify policy decisions taken around the re-accreditation issue, such as: the requirement to undergo re-accreditation; the meaning of the requirement to consult; the time lines for a review; etc. With this in mind, the Working Group recommends the following amendments:

Add a new sub-paragraph (d) to existing Rule 3 as follows:

3(d). All members and Observer Status National Institutions are subject to re-accreditation on a cyclical basis. The ICC may determine the periodicity of re-accreditation, but this cannot be longer than five (5) years. The rules set out below with regard to 'membership' apply to Institutions applying for membership as well as to Institutions undergoing re-accreditation. In particular, reference to 'application for membership' means both the initial application and an application for re-accreditation.

Revise existing Rule 3(g) [3(j) as it appears in Annex 1] by adding the following sentence to the rule, as follows:

3(j). Any review of a member's membership must be finalized within eighteen (18) months.

Re-number the last two sentences as independent sub-paragraphs of the rule, as follows:

3(k). As noted above in 3(d) [proposed new sub-clause], member and observer National Institutions are subject to periodic re-accreditation.

3(l). On any such review or re-accreditation the Chairperson or Sub-Committee shall have all the powers and responsibilities as in an application under Rule 3.

Issue 7: Responsibility to consult applicant Institutions⁴

With respect to the responsibility to consult applicant Institutions as part of the accreditation and re-accreditation process, the Working Group notes a lack of clarity with regard to the obligation imposed by existing rule 3(e) [3(g) as it appears in Annex 1] of the ICC Rules of Procedure to consult an Institution in the event of an “adverse decision”. This lack of clarity relates to:

- What constitutes an ‘adverse decision’;
- Who was responsible for the consultation in such circumstances;
- What the purpose of the consultation was; and
- Whether the consultation had to be in person.

With regard to the general need for consultation and dialogue, the Working Group notes the principles put forward in Part 1 of this paper, which are necessary to ensure consistency and fairness. While there need not be any obligation for consultation and dialogue, there may be occasions when it is deemed necessary to obtain as clear an understanding of the applicant Institution’s mandate and actions as possible. Hence, the Working Group proposes that it has the general authority to undertake consultation as, when and how it deems necessary to ensure fairness of result within the context of a transparent, rigorous and independent process.

The Working Group recommends that all consultations must be supported by written documentation. Where a verbal consultation is undertaken, a record of that should be maintained, and, in the event that the verbal testimony informs the recommendation or decision that follows, the applicant Institution should have access to that record to ensure its accuracy.

With regard to the obligation to consult in the event of an adverse decision, after reviewing the comments made by members, the Working Group recommends that existing rule 3(e) [3(g) as it appears in Annex 1] of ICC Rules of Procedure be clarified:

- To make it explicit that an ‘adverse decision’ means a recommendation from the Sub-Committee to the ICC to remove a ‘fully compliant’ or ‘observer status’ (if there is consensus to include these institutions in the accreditation process) accreditation from an Institution following a re-accreditation review or as the result of a ‘changed circumstance’ or an ‘early warning’ process;
- To make it clear that the ‘consultation’ will be carried out by the Sub-Committee for purposes of explaining precisely why it will recommend the action and to inform the Institution about what documentation it must provide to forestall or reverse it;
- To specify that the form and nature of the consultation may be determined by the Sub-Committee, with the proviso that verbal consultations must be supported by written records of the conversation.

⁴ This issue should not be confused with the requirement to “inform applicant institutions of the decisions taken and their rationale” or to carry out further consultations with an institution that has been denied accreditation, both of which are clear.

The Working Group does not recommend any change to the approved process for re-accreditation since the operations of the ICC and the Sub-Committee are governed by their respective Rules of Procedure.

Proposed Action

19. To respond to the need for flexibility in allowing consultations at any time during the accreditation process and the obligation to consult when taking an ‘adverse decision’, the Working Group recommends that existing Rule 3(d) [3(e) as it appears in Annex 1] of the ICC Rules of Procedure should be amended to read:

3(e). All questions of membership, including whether a National Institution complies with the Paris Principles, shall be decided by the ICC or any membership sub-committee it may establish on the basis of written documentary evidence submitted. In coming to its decision, the ICC or Sub-Committee may adopt processes that facilitate dialog and exchange of information between it and the applicant Institution as deemed necessary to come to a fair and just decision. Notwithstanding this, any recommendation that would serve to remove accreditation status from an applicant Institution (hereafter referred to as an ‘adverse decision’) can only be taken after the applicant Institution is informed of this intention and is given the opportunity to provide in writing, within one year of such notice, the documentary evidence deemed necessary to establish its continued conformity to the Paris Principles.

20. The Working Group also recommends that a new Rule 4.5 be added under Rule 4 of the Rules of Procedure of the Sub-Committee on Accreditation, with a consequential amendment to Rule 4.2, as follows:

4.2. Unless specifically authorized in exceptional circumstances by the Chairperson to satisfy the conditions imposed by sub-article 4.5 below, the meeting will be restricted to members of the Sub-Committee on Accreditation and the Office of the United Nations High Commissioner for Human Rights.

4.5. The Sub-Committee may, pursuant to Rule 3(d) [3(e) if the proposed amendments to the Rule are accepted] of the ICC Rules of Procedure, 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 Rule 3(d) [3(e) if the proposed amendments to the Rule are accepted], 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 makes the final decision on membership, an Institution undergoing a review retains its membership status during the consultation process.

Issue 8: The process of challenging adverse accreditation recommendations

The Working Group believes that the accreditation process should provide a mechanism that would give applicants the opportunity to formally challenge the recommendation decided upon by the Sub-Committee. In addition to reviewing the Sub-Committee recommendations before coming to a final determination, the ICC would, in the case of a challenge, be required to review all documentation originally provided by the applicant to the Sub-Committee as well as any new documentation submitted in support of the challenge. To preserve the integrity of the process, time limits would exist with regard to the launching of a challenge and the provision of additional documentation in support of one. Several sub-issues must be considered in applying this recommendation, as discussed below.

Sub-Issue 1: Form of Challenge (Oral or Documentary)

The Working Group argues that it is both natural and consistent with the principles of transparency and fairness to allow appellant Institutions the opportunity to provide verbal explanatory comments on documentation that they submit to the authority charged with reviewing an accreditation recommendation.

The submission of new documentation should not be allowed unless that documentation supports a contention that the Sub-Committee has misunderstood or misinterpreted some aspect of the applicant institution's submitted documentation. The reason for this lies with the requirement for applications to be thoroughly documented in advance of the Sub-Committee's review of the file. Furthermore, the Secretariat extends considerable effort to ensure that this is done, including by asking applicant institutions for additional information when this is considered necessary. The applicant institution is therefore already aware of problematic areas and is accorded the opportunity to provide all the documentation it has to support its application. To allow an institution to provide additional, new documentation at this stage would be to subvert the many efforts the ICC has taken to ensure that the current process functions in a fair and timely manner.

Therefore, to safeguard the documentary process the following should be adhered to:

1. All decisions must be made based on documentary evidence.
2. Any verbal evidence given must relate to the documentary evidence provided such that it cannot be in the form of 'new' evidence.
3. The ultimate decision must record, where necessary, the nature and substance of the verbal evidence that was considered pertinent in coming to the decision.

Sub-Issue 2: Resolving Issues Related to an Immediate Challenge

Currently, the Sub-Committee meets twice annually, once at the time of the regular scheduled Annual Meetings of the ICC in March or April, and once approximately six months after. Recommendations taken during these latter meetings can be challenged to the ICC at the next meeting. This would give the appellant institution the time to prepare its case and the ICC the time to review that case. This is not an advantage enjoyed by applicant institutions whose application is considered during the regular ICC meetings as they might have only a day at most to prepare and document a challenge; similarly, the ICC would have little or no time to review those documents before being asked to render a decision. Furthermore, it is inherently unfair to ask the ICC to review new documentation in the circumstances described above. The challenge mechanism, if it is to have real legitimacy, must allow for reasoned re-consideration. This would be impossible to ensure in the time lines involved in an immediate review.

To respond to this problem, the Working Group proposes that the Sub-Committee continues to meet twice yearly, but that the meeting held at the ICC regular meeting be scheduled after that meeting concludes. This approach calls for the ICC to develop a mechanism to hear those challenges in a timely manner. Given that the volume of challenges is not likely to be large, the Working Group believes decision-making through teleconferencing is a reasonable option. This might be done even following the Sub-Committee meeting in October 2008.

Sub-Issue 3: Status of the Institution during the Process of Challenging an Adverse Accreditation Recommendation

The rights and privileges of the Institutions facing a challenge to an adverse accreditation recommendation should be parallel to that of the Institutions facing review, that is, the rights and privileges they enjoy at the time should remain until the challenge is finalised. This means:

- *New applicants*, including institutions reapplying after having their status lapse, would have no rights and privileges during the challenge period.
- *Re-applicants*, that is, institutions with a status less than ‘fully compliant’, would continue to enjoy the rights and privileges associated with their current status during the challenge period.
- *Re-accreditation* applicants would continue to enjoy the rights and privileges associated with their current status during the challenge period.

To be consistent with the General Observations⁵ of the Sub-Committee, there should be a strict time limit during which the appellant institution must satisfy the 16 voting members of the ICC that it complies with the *Paris Principles*. The Working Group suggests that an Institution have one (1) month in which to submit supportive documentation to the Chair of the ICC to support its challenge of the adverse accreditation recommendation.

Proposed Action

21. Proceed with the current process, but in the event that an Institution formally challenged a Sub-Committee recommendation, the ICC would be compelled to review the documentation supporting the applicant’s membership request, and the applicant’s written challenge, in coming to its final decision. The Working Group recommends that the following sub-clause be inserted in to Rule 3 of the ICC Rules of Procedure:

3(f). Should a Sub-Committee be charged with coming to a membership decision, that decision shall be considered a recommendation, with the final decision being taken by the ICC. Any applicant can challenge a recommendation made by the Sub-Committee by submitting a written challenge to the ICC Chairperson within one (1) month of the Sub-Committee recommendation. Within twenty (20) days of this submission, the 16 ICC voting Members will approve or reject the recommendation of the Sub-Committee. All approved recommendations are final decisions. Unapproved decisions are referred for consideration at the next ICC meeting. The decision of the ICC on membership, which will be based on that review, is final.

⁵ Please see Issue 10 for a discussion on Sub-Committee General Observations.

Issue 9: The status of Institutions under review or suspension and related issues

The Working Group agrees that it is important that the Rules of Procedure specifically deal with the issue of de-certification and the status of members during review or suspension. The following possibilities regarding the status of an Institution during re-accreditation or review are set out in the Sub-Committee's General Observations⁶ delivered at the 19th Session of the Annual Meeting of the ICC:

Deferral of consideration of status:

- Applies to Institutions that submit an acceptable written request and justification for a deferral of re-accreditation;
- Can be up to one year;
- It is inferred that Institutions that have deferred re-accreditation status retain all rights and privileges.

Suspension of status:

- Applies to Institutions due for re-accreditation that file late applications or that do not submit their applications;
- Suspended institutions lose all rights and privileges until such time as they demonstrate full compliance with the *Paris Principles* to the Sub-Committee or their membership status is changed.

Lapse of status:

- Applies to suspended or 'deferred application' institutions that do not provide their submission for re-accreditation within the year allowed;
- Applies to institutions under review that do not convince the Sub-Committee that they are fully compliant with the *Paris Principles* within the year and a half allowed for a review;
- It is inferred that an Institution with lapsed membership loses all rights and privileges.

Review of status:

- Applies to Institutions that are exempted from re-accreditation process and given eighteen months to satisfy the Sub-Committee that they remain compliant with the *Paris Principles* despite noted 'changed circumstances';
- Institutions under review retain all rights and privileges during the review.

The Working Group believes that the situation of an Institution that does not submit a re-accreditation application or is delayed in doing so without justification raises different issues than the situation of an Institution under review: in the former, an Institution does not comply with a published and well-known membership requirement; in the latter, circumstances, usually beyond the control of the Institution, indicate a possible change in situation that needs examination. While there is no reason to conclude that an Institution under review is non-compliant (the very purpose of the review is to make that assessment) a presumption of non-compliance can be made if an Institution does not submit its re-

⁶ Please see Issue 10 for a discussion on Sub-Committee General Observations.

accreditation application and supporting documents. This process is fair in that:

- It serves a recognised and legitimate purpose;
- Institutions are aware of what is required and are given ample time to comply;
- It allows for deferrals when this is necessary;
- The consequence of not meeting the requirements of timely application are known;
- The consequence of not meeting the requirement is not capricious given the presumption of non-compliance that can be drawn.

Proposed Action

22. The Working Group recommends that the ICC Rules of Procedure explicitly provide for de-certification of members and the conditions under which this can be done, as well as set out the impact on the privileges that the member will enjoy in the circumstances, by amending existing rule 3(a) and adding a new rule 3(b) as follows:

3(a). Only National Institutions that comply fully with the Paris Principles shall be eligible to be voting members of the group of National Institutions; Institutions that are only partially compliant are eligible to attain 'observer status'. In the event that membership lapses or is revoked or suspended, all rights and privileges conferred on that Institution through membership are immediately suspended. In the event that an Institution is under review, it shall retain the 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.

3(b). Membership may be suspended if a National Institution fails to submit its application for re-accreditation or fails to do so within the prescribed time without justification; members remain in suspense until the body determining membership comes to a decision on their compliance with the Paris Principles.

Membership may lapse if a National Institution fails to submit an application for re-accreditation within one year of being suspended for failure to reapply, or if a voting member under review fails to provide sufficient documentation, within eighteen (18) months of being placed under review, to satisfy the body determining membership that it remains in conformity with the Paris Principles.

Membership may be revoked if the body determining membership determines a National Institution no longer meets the membership requirements relating to compliance with the Paris Principles.

Suspended members remain suspended until the body determining their compliance with the Paris Principles comes to a determination of their membership status or until their membership lapses.

Members whose status has lapsed or been revoked may regain membership only by re-applying for membership as provided for in these Rules.

Issue 10: Sub-Committee General Observations

The Working Group on Accreditation has strived to craft the accreditation process in a consistent, transparent and coherent way. To this end, the Sub-Committee on Accreditation has made strides to enunciate its interpretation of NHRI compliance with the Paris Principles in the form of 'General Observations'. The General Observations of the Sub-Committee were first developed at its meeting in

October 2006 in an effort to meet the abovementioned exigencies of the Working Group on Accreditation. At this time, the ICC plenary adopted the list of General Observations at its 18th Session. Following its practice, the Sub-Committee continued to make General Observations in relation to its accreditation at its sittings in March and October 2007. However, these lists of General Observations have yet to be formally adopted by the ICC.

Purpose

The Sub-Committee on Accreditation is mandated to assess whether an applicant institution is in conformity with the Paris Principles⁷. Therefore identifying concerns that it has about the non-compliance of NHRIs with the Paris Principles has always been, and continues to be, considered an exercise internal to the Sub-Committee's working methods. The General Observations are a formulation of the common or important interpretative issues and are intended to be focused guidelines for NHRIs regarding: (i) the implementation of the Paris Principles, to ensure full compliance; or (ii) the ICC accreditation application process.

Force & Effect

A parallel may be drawn between the practice of the Sub-Committee on Accreditation to produce General Observations, and that of United Nations Treaty Body Committees to produce Concluding Observations. To this end, the General Observations are submitted to the NHRI concerned and made public through their inclusion in the Report and Recommendations of the Sub-Committee. Further, the recommendations present an opportunity for the concerned NHRI to affect change in their national human rights system by utilizing the Sub-Committee's General Observations to create momentum for improved State compliance of the Paris Principles. The NHRI may, on the basis of the General Observations, bring attention to areas of concern, suggest further steps to be taken, and demand improvements in the State's treatment of the NHRI before the accreditation status of the NHRI is next reviewed. Public awareness of a State's failure to fulfil its duties at an international forum can be useful in encouraging and motivating States to make changes at the domestic level.

Proposed Action

Given the use of Concluding Observations by Human Rights Council Treaty Bodies, and given the existence of General Observations in the ICC as adopted in October 2006, the Working Group recommends that the ICC continue to develop and utilise General Observations and that the Sub-Committee Rules of Procedure be amended.

23. Additional sub-rules should be included under "6. Report and Recommendations":

6.4 General Observations are to be developed by the SCA and approved by the ICC.

6.5 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;

⁷ Art. 1 Rules of Procedure for the Sub-Committee on Accreditation

- (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.

Part IV: A Normative Framework (Criteria for Accreditation)

To ensure greater transparency and rigour in the accreditation process, specific indicators of conformity should be identified for each criteria set out in the *Paris Principles* that the Sub-Committee is to examine. These indicators should be relatively easy to apply and must be accepted by ICC members. Conformity, and therefore accreditation, should be largely determined according to whether or not the Institution's application and supporting documentation demonstrates that these indicators are being met. All obligatory criteria set forth in the *Principles* should be examined through these indicators, which could also provide guidance on broader policy issues such as the definition of "independence", "national", "plurality" and other concepts at the heart of the accreditation process.

Additional principles relating to institutions with quasi-jurisdictional authorities should not be examined for purposes of determining compliance with the *Paris Principles*. Nonetheless, data on the additional principles could be gathered in the application process for comparative and information purposes.

The determination process may have to look beyond technical compliance to examine whether the Institution's actions demonstrate compliance with some or all of the *Principles*, to the extent that this can be done in an appropriate, reasonable, consistent and fair manner.

The Members note that it may be difficult to define indicators that are acceptable to every Institution and therefore that vigilance is necessary to ensure that the process does not result in a 'lowest common denominator' approach. In fact, all members agree that the result sought is quite the opposite: a process that, while fair, is demanding, one geared to ensuring that only truly legitimate and credible National Institutions are accepted as full members.

Proposed Action

24. The Working Group recommends that the ICC strike a new Working Group, including a member from the ICC Secretariat and from each of the regional groups represented, to prepare a draft normative framework that could be used to assist in determining whether an applicant Institution, or an Institution seeking re-accreditation, is in conformity with the Paris Principles; the Working Group should have included in its mandate the obligation to review what documentation should be required to support an application for accreditation or re-accreditation. The terms of reference for that Working Group should require that the draft framework be prepared by March 2008 and be forwarded to ICC members for comment so that the final decision on the framework can be taken by the ICC at its 20th Annual Meeting in 2008.

APPENDIX

ANNEX I

THE INTERNATIONAL CO-ORDINATING COMMITTEE OF NATIONAL INSTITUTIONS FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

RULES OF PROCEDURE

PREAMBLE:

The International Co-ordinating Committee is a representative body of National Human Rights Institutions established for the purpose of creating and strengthening National Human Rights Institutions which are in conformity with the Paris Principles⁸. It performs this role through encouraging international co-ordination of joint activities and co-operation among these National Human Rights Institutions, organising International Conferences, liaison with the United Nations and other international organisations and, where requested, assisting governments to establish a National Institution.

It works to create and strengthen National Institutions and to ensure they conform to the Paris Principles.

1. Name

The name of the committee is the International Co-ordinating Committee of National Human Rights Institutions for the Promotion and Protection of Human Rights (the ICC).

2. Functions

The functions of the ICC are:

- (a) To co-ordinate, at an international level, the activities of National Human Rights Institutions established in conformity with the Principles Relating to the Status and Functioning of National Institutions for the Promotion and Protection of Human Rights (the Paris Principles).
- (b) To support the creation and strengthening of National Human Rights Institutions (National Institutions) in conformity with the Paris Principles.
- (c) To ensure regular contacts with the Office of the United Nations High Commissioner for Human Rights and the other international organisations concerned with the promotion and protection of human rights.

⁸ Commission on Human Rights resolution 1992/54 of 3 March 1992, annex (*Official Records of the Economic and Social Council, 1992, Supplement No. 2 (E/1992/22)*, chap II, sect. A); General Assembly resolution 48/134 of 20 December 1993, annex.

- (d) To plan and organise with the host institution International Conferences for National Institutions in co-operation with the Office of the United Nations High Commissioner for Human Rights.
- (e) To encourage and assist as requested the organisation of Regional Workshops of National Institutions.
- (f) To encourage co-operation amongst National Institutions.
- (g) To follow up on and, where appropriate, implement recommendations of International Conferences of National Institutions and other relevant United Nations resolutions.
- (h) To liaise with such other organisations as may be engaged in the promotion and protection of human rights.
- (i) To undertake such other functions as are referred to it by International Conferences of National Institutions and consider matters referred to it by regional meetings.

3. Membership of the Group of National Institutions

- (a) Only National Institutions which comply fully with the Paris Principles shall be eligible to be voting members of the group of National Institutions; Institutions that are only partially compliant are eligible to attain ‘observer status’. In the event that membership lapses or is revoked or suspended, all rights and privileges conferred on that Institution through membership are immediately suspended. In the event that an Institution is under review, it shall retain the status it has been granted until such time as the body determining membership comes to a decision as to its compliance with the Paris Principles or its membership lapses.
- (b) Membership may be suspended if a National Institution fails to submit its application for re-accreditation or fails to do so within the prescribed time without justification; members remain in suspense until the body determining membership comes to a decision as to its compliance with the Paris Principles or its membership lapses.

Membership may lapse if a National Institution fails to submit an application for re-accreditation within one year of being suspended for failure to reapply, or if a voting member under review fails to provide sufficient documentation, within eighteen (18) months of being placed under review, to satisfy the body determining membership that it remains in conformity with the Paris Principles.

Membership may be revoked if the body determining membership determines that a National Institution no longer meets the membership requirements relating to compliance with the Paris Principles.

Suspended members remain suspended until the body determining their compliance with the Paris Principles comes to a determination of their membership status or until their membership lapses.

Members whose status has lapsed or been revoked may regain membership only by re-applying for membership as provided for in these Rules.

Only one National Institution per state shall be eligible to be a voting member. Where more than one institution in a state qualifies for membership the state shall have one speaking right, one voting right, and if elected one committee member. The choice of an institution to represent the National Institutions of a particular state shall be for the relevant institutions to determine.

- (c) Any National Institution seeking membership shall apply to the Chairperson of the ICC. That National Institution shall supply, in support of its application:
- a copy of the legislation or other instrument by which it is established and empowered
 - an outline of its organisational structure including staff complement and annual budget
 - a copy of its most recent annual report or equivalent document
 - 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 may determine the form in which this statement is to be provided.
- (d) All members and observer-status National Institutions are subject to re-accreditation on a cyclical basis. The ICC may determine the periodicity of re-accreditation, but this cannot be longer than five (5) years. The rules set out below with regard to ‘membership’ apply to Institutions applying for membership as well as Institutions undergoing re-accreditation. In particular reference to ‘application for membership’ means both the initial application and the application for re-accreditation.
- (e) All questions of membership, including whether a National Institution complies with the Paris Principles, shall be decided by the ICC or any membership sub-committee it may establish, on the basis of written documentary evidence submitted. In coming to its decision, the ICC or sub-committee may adopt processes that facilitate dialog and exchange of information between it and the applicant Institution as deemed necessary to come to a fair and just decision. Notwithstanding this, any recommendation that would serve to remove accredited status from an applicant Institution (hereafter referred to as an ‘adverse decision’) can only be taken after the applicant Institution is informed of this intention and is given the opportunity to provide in writing, within one year of

such notice, the documentary evidence deemed necessary to establish its continued conformity to the Paris Principles.

- (f) Should a Sub-Committee be charged with coming to a membership decision, that decision shall be considered a recommendation, with the final decision being taken by the ICC. Any applicant can challenge a recommendation made by the Sub-Committee by submitting a written challenge to the ICC Chairperson within one (1) month of the Sub-Committee recommendation. Within twenty (20) days of this submission, the 16 ICC voting Members will approve or reject the recommendation of the Sub-Committee. All approved recommendations are final decisions. Unapproved decisions are referred for consideration at the next ICC meeting. The decision of the ICC on membership, which will be based on that review, is final.
- (g) Should the application for membership of any National Institution be declined by reason of its failure to comply with the Paris Principles, the ICC or its delegate may consult further with that institution concerning compliance.
- (h) Any National Institution whose application for membership has been declined may reapply for membership at any time.
- (i) A National Institution that is granted observer status has the right to participate as an observer in open meetings and workshops of the ICC; an Institution denied A or B status may, with the consent of the ICC, attend meetings or workshops of the group as observer.
- (j) Where the circumstances of any member of the group of National Institutions change in any way which may affect its compliance with the Paris Principles, that member shall notify the Chairperson of those changes and the Chairperson shall place the matter before the accreditation sub-committee for review of that member's membership.

Where, in the opinion of the Chairperson of the ICC or of any member of the accreditation sub-committee, it appears that the circumstances of any member of the group of National Institutions 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 member's membership.

Any review of a member's membership must be finalized within eighteen (18) months.

- (k) As noted above in 3(d), [proposed new sub-clause] member and observer National Institutions are subject to periodic re-accreditation.
- (l) On any such review or re-accreditation the Chairperson or sub-committee shall have all the powers and responsibilities as in an application under Rule 3.

4. Regional Groupings of Members

- (a) For the purpose of ensuring a fair balance of regional representation on the ICC the following regional groups are established:
 - Africa
 - Europe
 - The Americas
 - Asia-Pacific
- (b) The members within any regional group may establish such sub-regional groupings as they wish.
- (c) The members of regional groups may establish their own procedures concerning meetings and activities.
- (d) Regional groups are to elect four members to represent them on the ICC on a regional or a sub-regional basis as they choose.

5. Membership of the ICC

- (a) Membership is the prerogative of a National Institution not of any individual and is restricted to institutions approved to be members pursuant to clause 3 of these Rules. There shall be 16 members of the ICC comprising four representatives from each of the regional groups.
- (b) Regional group representatives are eligible for re-election.
- (c) Regional group representatives on the ICC shall be elected from within each regional group for a term of three years.

6. Chairperson and Deputy-Chairperson of the International Co-ordinating Committee

- (a) At its first meeting following adoption of these rules the members of the ICC present shall elect one of their number to be the Chairperson and another to be the Deputy Chairperson.
- (b) The roles of Chairperson and Deputy Chairperson attach to the National Institution whose representative is elected.
- (c) The Chairperson and Deputy-Chairperson shall serve for a term of three years and may be re-elected at the conclusion of the term.

7. Liaison with Other Human Rights Institutions and NGOs

- (a) The ICC may liaise with other human rights institutions including the International Ombudsman Institute and non-governmental organisations.
- (b) The ICC may decide to grant such organisations observer status at any meetings or workshops of the group of National Institutions.

8. Meetings

- (a) A meeting of the ICC shall be held in conjunction with the annual meeting of the Human Rights Council.
- (b) A meeting of the ICC shall be held in conjunction with the bi-annual International Conference for National Human Rights Institutions.

Otherwise, the ICC shall meet at such times and places as it shall decide.

9. Conduct of Business

English, French, and Spanish shall be the working languages of the ICC.

A majority of the Members of the ICC shall constitute a quorum.

An agenda for each meeting shall be drawn up by the Chairperson in consultation with the Members. Agenda items may be added at the meeting if approved by a majority of the Members present.

Members of the ICC shall be represented by duly authorized representatives of the institutional members concerned who may be accompanied at meetings by such advisers from the institution as they may require.

Each member shall have one vote. Where possible decisions of the ICC shall be reached by consensus. When consensus is not possible, decisions shall be by a majority of members present and voting. In the event of an equality of votes, the proposal being voted on shall be regarded as being defeated.

Representatives of National Institutions established in accordance with the Paris Principles, other than ICC members, are welcome to attend meetings.

The Chairperson, after consultation with ICC members, may invite National Institutions who are not members of the ICC and any other person or institution to participate in the work of the ICC as an observer without the right to vote.

10. Further Procedure

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

11. Amendment of Rules of Procedure

These Rules of Procedure may be amended only by an International Conference of National Human Rights Institutions.

ADOPTED 15 APRIL 2000

AND AS AMENDED 13 APRIL 2002

ANNEX II

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

1. Mandate

In accordance with the Rules of Procedure of the International Coordination Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), the Sub-Committee on Accreditation has the mandate to review and analyse accreditation applications forwarded by the ICC Chairperson and to make recommendations to ICC members 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 accredited national institution for each of the four (4) regional groupings as established by the ICC Rules of Procedure, namely Africa, Americas, Asia-Pacific, and Europe.

2.2. Members are appointed by Regional Groupings 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 NI in that region.

2.4 The Office of the United Nations High Commissioner for Human Rights shall be a permanent observer to the Committee and in its capacity as Secretariat of the ICC, support the 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 Grouping Representative to the Sub-Committee on Accreditation shall facilitate the application process for national institutions in the region.

3.2. The Regional Grouping Representative shall supply national institutions 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 Rules of Procedure (art. 3), any national institution 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 so that they can be passed on to the ICC Chairperson no later than one (1) month prior to that meeting. Subject to paragraph 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 delay 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. The ICC Chairperson will ensure that copies of the applications and supporting documentation are provided to each member of the Sub-Committee on Accreditation.

3.7. The ICC Chairperson, with support from the Office of the United Nations High Commissioner for Human Rights, 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 annual meeting of the ICC in order to review new applications, additional information submitted on applications presented previously, and prepare recommendations.

4.2. Unless specifically authorized in exceptional circumstances by the Chairperson to satisfy the conditions imposed by sub-article 4.5 below, the meeting will be restricted to members of the Sub-Committee on Accreditation and the Office of the United Nations High Commissioner for Human Rights.

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

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 for determination and guidance. An ultimate decision as to accreditation can only be taken once the ICC provides that decision or guidance.

4.5 The Sub-Committee may, pursuant to Rule 3(d) [3(e) if the proposed amendments to the Rule are accepted] of the ICC Rules of Procedure, 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 Rule 3(d) [3(e) if the proposed amendments to the Rule are accepted], 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 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 Rules of Procedures, the different classifications for accreditation used by the Committee are:

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

6. Report and Recommendations

6.1 The Chair of the Sub-Committee on Accreditation will present a report with recommendations and rationale to members of the ICC for their decision.

6.2. The ICC Chairperson will indicate in the report of the meeting decisions taken by ICC members with regards to applications for accreditation; in the event the ICC takes a decision contrary to the recommendation of the Sub-committee, the ICC Chairperson will indicate the reasons for this in that report.

6.3. The Chairperson of the ICC will inform applicant institutions of the decisions taken and their rationale by ICC members.

6.4 General Observations are to be developed by the SCA and approved by the ICC.

6.5 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.