PROPOSED AMENDMENTS TO THE ICC STATUTE

Introduction.

This paper proposes amendments to the ICC Statute for consideration by members at the General Meeting in March 2012.

Proposed Amendments

There are three substantive amendments which deal with the following issues:

(i) providing the ICC General Meeting with the power to determine both when and where to hold an International Conference as recommended by the APF annual meeting in Bangkok 2011. The proposal is outlined in Annex 1.

(ii) defining the ‘exceptional circumstances’ that may lead to the urgent suspension of a members accreditation status pursuant to Article 18 as recommended by the October 2011 meeting of the ICC Bureau. The proposal is outlined in Annex 2;

(iii) defining the eligibility criteria for election to the position of ICC Chairperson and Secretary (Vice-Chairperson) as requested by the October 2011 meeting of the ICC Bureau. The proposal is outlined in Annex 3.

A further two procedural amendments are proposed to:

(iv) change the address of the registered office of the ICC. The proposal has been proposed by the ICC’s Swiss Legal Adviser and is outlined in Annex 4.

(v) include a reference to Arabic as one of the official ICC languages. The proposal formalises existing practice and is outlined in Annex 5.

Recommendation

1. That members agree to the proposed amendment to provide the ICC General Meeting with the power to determine both when and where to hold an International Conference.

2. That members review the attached documentation and consider the proposed definition of exceptional circumstances.

3. That members review the attached documentation and consider the proposed amendment to specify eligibility criteria for election as ICC Chairperson and Secretary (Vice Chairperson).
4. That members agree to the amendment proposed by the ICC’s Swiss Legal Adviser to change the address of the registered office of the ICC.

5. That members agree to the proposed amendment to formalise current practice and include Arabic as an official ICC language.
ANNEX 1 – FREQUENCY AND LOCATION OF INTERNATIONAL CONFERENCES

Proposal

To amend the ICC Statute to provide the ICC General Meeting with the power to determine both when and where to hold an International Conference.

Background

Article 8 of the ICC Statute, together with the relevant Rules of Procedure, require that the ICC convene an International Conference every two years in a location determined on the basis of regional rotation. Together, these requirements unduly limit the capacity of the membership to determine the frequency and location of International Conferences in a manner that promotes their best interests and the best use of their resources.

When the decision to hold regionally based biennial conferences was made, the ICC was a very new institution with few opportunities for collective discussion on issues of substance. Biennial conferences were intended to provide an important opportunity for member institutions to discuss thematic issues of concern, to share and learn from the experience and expertise of other NHRIs, and to identify steps that could be taken to progress key issues at the domestic level.

However, as the ICC has matured, more opportunities for collective discussions now exist. ICC General Meetings now provide an opportunity for broader discussions on human rights and strategic issues of relevance to ICC members. In addition, there are regional meetings on an annual basis, as well as inter and intra-regional meetings.

These developments provide opportunities for NHRIs that did not exist when the ICC decision to hold biennial conferences was originally made, and provide an opportunity to reconsider whether the mandatory convening of biennial conferences is still warranted.

A range of other factors also suggest that the ICC should reconsider whether the mandatory convening of biennial conferences is still warranted. These include:

• **Cost to ICC and organisers.** The conduct of a biennial conference is an increasingly expensive undertaking for the organizing member, the ICC and partners organisations. Each are required to find additional financial, human and other resources when in reality many face significant financial, staffing and time constraints in undertaking their domestic work;

• **Competing commitments.** NHRIs have an increasing number of regional and international obligations involving travel away from their domestic jurisdictions. These include the regular annual ICC General Meeting, annual regional NHRI meetings, attendance at various UN fora including the Human Rights Council, the Universal Periodic Review, Treaty Bodies and Special Procedures. In addition, there are inter and intra-regional NHRI meetings as well as interaction with the various regional human rights commissions and courts;

• **Alignment with term of the ICC Chairperson.** The ICC Chairperson serves a three year term, and under the current provisions, every second ICC Chairperson would be responsible for convening two International Conferences within their term. Amending the Statute to provide for triennial conferences would ensure that there is only one international conference in each ICC Chair term of office. Importantly, this would also ensure that the ICC Chair and Bureau have sufficient time to focus on other priorities within the ICC Strategic
Plan, and NHRIs preserve more capacity and resources for their domestic programs;

- **Promoting implementation of ICC Conferences outcomes.** With many NHRIs working towards 3-5 year strategic plans based on domestic priorities, the opportunity to regularly supplement existing priorities with those determined by biennial conferences is limited. Providing more time between meetings should allow greater opportunities for the implementation of international conference outcomes by individual institutions, regional networks and the ICC.

The ICC Bureau considered this issue at its October meeting and supported the proposal to amend the ICC Statute to provide the ICC General Meeting with the power to determine both when and where to hold an International Conference.

In order to provide the ICC General Meeting with power to determine when and where to hold an International Conference, minor amendments to Article 8 of the ICC statute are required.

**Proposed Amendment**

It is proposed that members agree to replace Article 8 with the following:

“The ICC may convene a **triennial** International Conference in accordance with the Rules of Procedure of International Conferences of National Institutions for the Promotion and Protection of Human Rights.”
## ANNEX 2 – DEFINITION OF EXCEPTIONAL CIRCUMSTANCES

### Proposal

To amend the ICC Statute to include a definition of the exceptional circumstances that might lead to the urgent suspension of accreditation status pursuant to Article 18.2.

### Background

At ICC 24, the General Meeting agreed to adopt amendments to the ICC Statute to provide a power to immediately suspend a member’s accreditation status in exceptional circumstances.

The new provisions are found in Articles 18.2 and 18.3 of the ICC Statute, and relevantly provide as follows:

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

The amendments were adopted on the understanding that the ICC Bureau would seek to develop a definition of ‘exceptional circumstances’ and bring forward a proposal for consideration and adoption by members at the next ICC General Meeting in 2012.

Members of the Americas region, who had expressed concern about the need for a definition, prepared a draft provision which was considered by the ICC Bureau in October 2011. The provision seeks to impose appropriate limitations on the use of this extraordinary power by including references to both the situation within a particular country, and its effect on the NHRI in question.

### Proposed Amendment

It is proposed that members consider inclusion of the following definition of exceptional circumstances immediately after the existing text in Article 18.2.

“For the purposes of Articles 18.2 and 18.3, an ‘exceptional circumstance’ refers to a situation such as:
- a break in the constitutional or democratic order; or
- a declared/undeclared state of emergency; or
- gross violations of human rights;

and this is accompanied by any of the following:

- the A status NHRI does not conduct itself with a heightened level of vigilance and independence in conformity with its mandate;
- there is a change in the composition of the NHRI that is not undertaken in accordance with the established selection and appointment process; or
- there is a change in the NHRI’s enabling legislation or other applicable law that is contrary to the Paris Principles.”
## ANNEX 3 – CRITERIA FOR ELECTION AS ICC CHAIRPERSON AND SECRETARY

### Proposal

To consider whether there is a need to amend the ICC Statute to specify the eligibility criteria for election to the role of ICC Chairperson and Secretary (Vice-Chairperson).

### Background

The ICC Statute provides that the ICC is to be managed by a sixteen member ICC Bureau, (Article 43). Composition of the ICC Bureau is determined by the four regional groups, each of which is responsible for appointing four A status member institutions. Each institution in turn nominates their individual representative on the ICC Bureau, (Article 31.4). The Chairperson and Secretary are elected by the ICC General Meeting from amongst the members of the ICC Bureau, on the basis of regional rotation, (Article 34).

The ICC Statute does not place any other conditions on who may be a ‘representative’ of an NHRI for the purposes of the membership of the ICC Bureau and therefore the only eligibility criteria for election to the position of ICC Chairperson or Secretary (Vice Chairperson) are that the individual has the support of the ICC Bureau member institution she or he represents, and that the member institution has the support of the regional group from which they are nominated.

Thus, while it is invariably the case that ICC Chairpersons and Secretaries (Vice Chairpersons) have been the current Commissioners, Board Members or Senior Executive Officers of their respective NHRIs, this is not a requirement in the ICC Statute. While it is highly unlikely, it is permissible that an external individual could be nominated by an ICC Bureau member institution to be its ‘representative’. Given the term appointments of Commissioners, Board Members and Senior Executives what is more likely, as has occurred recently, is that during the three year term of an ICC Chairperson or Secretary, that person’s national appointment may end.

At the ICC Bureau meeting in Seoul in October 2011, members discussed whether additional eligibility criteria were required.

A number of members were of the view that the head and ‘public face’ of the ICC should be a current member with relevant experience in the workings of National Human Rights Institutions at the domestic, regional and international level. They suggested that eligibility should therefore be restricted to individuals who were current Commissioners, Board Members or Senior Executive Officers of their respective NHRIs.

Conversely, other members noted that the ever increasing profile of the ICC, and the complexity and scope of work undertaken by its Chairperson, (including organisational
administration), meant that it would likely become more difficult for an existing NHRI Chairperson to fulfil effectively both their domestic NHRI and international ICC obligations. Similarly, while commending the ongoing support provided by OHCHR's NIRMS unit, members noted that the absence of an internal ICC secretariat continues to place significant pressures on both the ICC Chairperson and their NHRI. For these reasons, there may be value in retaining a degree of flexibility in formulating eligibility criteria for the positions of ICC Chairperson and Secretary (Vice Chairperson).

An approach which seeks to address both sets of concerns outlined above would be to impose eligibility criteria for election to the position of ICC Chairperson or Vice Chairperson which requires that an individual must hold or have held an appropriately senior position within a NHRI.

**Proposed Amendment**

Should members agree that additional eligibility criteria is required, it is proposed that members consider inserting the following eligibility criteria immediately after the existing text in Article 34 as follows:

“To be eligible for election to, and retention of, the position of ICC Chairperson or Secretary (Vice Chairperson), an individual must be, a Chairperson, Commissioner, Board Member or Senior Executive Officer of a National Human Rights Institution.”
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<thead>
<tr>
<th>ANNEX 4 – CHANGE OF REGISTERED ADDRESS</th>
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<td><strong>Proposal</strong></td>
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<tr>
<td>To amend the ICC Statute to change the provision listing the ICC’s registered address in Geneva.</td>
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<td><strong>Background</strong></td>
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<td>Swiss law requires an incorporated institution to specify in its Statute that it has a registered office. The ICC has previously used the address of its Swiss Legal Adviser however, since it has moved office, an amendment to Article 4.</td>
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<td>The ICC’s Legal Adviser has proposed inserting a more general provision in Article 4 as follows:</td>
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<td>“The registered office of the ICC is in Geneva, Switzerland.”</td>
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<td><strong>Recommendation</strong></td>
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<td>That members agree to the proposed amendment, noting that the change is proposed on the advice of the ICC’s Swiss Legal Adviser to address a minor technical matter arising under Swiss incorporation law.</td>
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## Proposal

To amend the ICC Statute to include Arabic as an official language of the ICC.

## Background

At ICC22, the General Meeting agreed to consider including Arabic as an additional official language and requested the ICC Bureau to consider whether sufficient resources were available to do so.

At the subsequent ICC Bureau meeting, members gave further consideration to the issue and agreed to implement the practice. It advised the ICC Finance Committee to include in the budget an allocation for additional translation costs, and since that time, official ICC documentation has been made available in Arabic.

However, no change has been made to the relevant sections of the ICC Statute, that is:

- Article 3, which provides for an official ICC logo in various languages;
- Article 42, which specifies the ICC’s working languages; and
- Article 50.1, which specifies the ICC Bureau's working languages.

An amendment is required to formalise this practice.

## Proposed Amendment

It is proposed to amend three provisions in the ICC Statute as follows:

1. Amend Article 3 to insert an additional official logo with the text “INTERNATIONAL COORDINATING COMMITTEE OF NATIONAL INSTITUTIONS FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS (ICC)” in Arabic:

2. Amend Article 42, by inserting the word ‘Arabic’ as follows:
   “Arabic, English, French, and Spanish shall be the working languages of the ICC. As a result, documents from the ICC should be available in these languages.”
(iii) Amend Article 50.1, by inserting the word ‘Arabic’ as follows:

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

Recommendation

That members agree to the proposed amendment, noting that it implements current ICC practice.