STRENGTHENING THE ICC ACCREDITATION SYSTEM

Outcomes Report of the Roundtable on Accreditation

hosted by
the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights & the Office of the High Commissioner for Human Rights
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OBSERVATIONS, CLARIFICATIONS & RECOMMENDATIONS

INTRODUCTION
On 10th March 2015, the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) and the Office of the High Commissioner for Human Rights (OHCHR) hosted a Roundtable on the accreditation process of national human rights institutions (NHRIs). The Roundtable formed part of the continuous process to strengthen the accreditation process including the ongoing need to regularly evaluate the accreditation process and when and where necessary to make changes to strengthen the system. Through these processes the accreditation process will have greater legitimacy, effectiveness, rigour and transparency.

These observations, clarifications and recommendations from each of the 4 Roundtable sessions will provide a roadmap going forward, identifying where there is a need for matters to be further consulted upon and where there is a need to explore further steps being taken. Any Recommendations made herein are subject to the required internal ICC processes set out in the ICC Statute; including broad consultation amongst members where required. A detailed report of the Roundtable will also be prepared.

SESSION 1: SCA PROCEDURES

OBSERVATIONS AND CLARIFICATIONS

In camera SCA proceedings
It was clarified that the once-off usage by the SCA of in camera decision making, and which was referred to in the Secretary General’s Report A/HRC 27/40, was a one-time decision of the SCA at the time. The SCA confirmed that in camera decision making by the SCA has not been used again, that the matter has been considered and that this practice will not be used in future.

Deferrals
The decision to defer consideration of an accreditation application is not a recommendation to the Bureau under Article 12 of the ICC Statute. Such a decision is therefore not subject to challenge in terms of the provisions of Article 12.

Civil society information
Article 3.6 of the SCA Rules of Procedure provides for information to be received by the SCA from civil society for consideration during the accreditation process. The SCA confirmed that it is the practice of the ICC Secretariat to send this information is sent to the NHRI concerned for response and comment prior to it being considered by the SCA.

Initiation of Special Reviews
As with deferrals, the SCA’s decision to initiate a Special Review is not a recommendation to the Bureau under Article 12 of the Statute and is not subject to the challenge provisions of Article 12. Once the Special Review has been conducted by the SCA and a recommendation on status is presented to the Bureau, the recommendation may at that time be the subject of a challenge.

Institutions in transition
The treatment within the accreditation procedures of accredited NHRIs in transition, such as merger or change in mandate, is unclear. In particular, there are no published criteria for whether a NHRI in
transition can apply for re-accreditation, or if it should apply for new accreditation (and, if the latter, how its accreditation status is affected in the interim).

**Evaluation of effectiveness**

The SCA was asked about possible instruments for the evaluation of actual performance of NHRIs in order to strengthen the accreditation mechanism.

**RECOMMENDATIONS**

1. The SCA Rules of Procedure should be revised or Practice Notes developed in order to:
   a. further clarify and formalize the criteria for deferrals;
   b. further clarify and formalize the process to decide whether or not to initiate a Special Review;
   c. clarify that the decision to defer or to initiate a special review cannot be challenged;

2. In accordance with the process set out in the ICC Statute for the making of statutory amendments, which includes broad consultation amongst the ICC membership, the SCA will draft proposed amendments to Article 12 of the ICC Statute. The proposed amendments will clarify that:
   a. a recommendation that has not been challenged by an applicant NHRI cannot be challenged by a Bureau member (Article 12);
   b. A Bureau member cannot support its own challenge (Article 12)
   c. each Bureau member must individually attest to its support of a challenge (Article 12).
   d. a decision to undertake a Special Review is a decision of the SCA rather than a recommendation of the SCA to the Bureau (Article 16) and;
   e. Such a decision is not open to the possibility of a challenge (Article 16).

3. The SCA Rules of Procedure should be revised or a practice note developed in order to clarify the treatment of accredited NHRIs ‘in transition’.

4. The use of instruments or criteria to evaluate the performance of NHRIs in the accreditation process should be considered.

**SESSION 2: INTERPRETATION MATTERS**

**OBSERVATIONS AND CLARIFICATIONS**

a) **Technical amendments to the ICC Statute**

Participants at the Accreditation Roundtable observed that there are a number of technical amendments to the ICC Statute could be considered in order to reduce ambiguity and ensure greater clarity and certainty.
b) Potential inconsistencies in the different language versions of the ICC Statute / Interpretation Clause
Participants noted that there may be inconsistencies between the various language versions of the ICC Statute. There is sufficient basis to warrant this matter receiving further attention.

c) The ICC name
The Roundtable clarified that the ICC Bureau has requested the ICC Chair to conduct a Communications Project which will consider the name of the ICC and through a process assess if there is a need for change. Should any change be required this will require various statutory amendments.

d) Accreditation – Challenges to SCA recommendations
Participants agreed that the ICC Statute and SCA Rules of Procedure could more clearly indicate: how the days referred to in Article 12 of the Statute are to be counted; how the additional 20 day period referred to in Article 12(iv) is implemented; and whether a Bureau member may support its own challenge.

It was clarified that where there is a challenge to the SCA recommendation, the summary and the statement of compliance are sent together with the submitted challenge and the SCA report to the Bureau. If at least one Bureau member supports the challenge during the initial 20-day period, all material that was before the SCA is provided to Bureau members and a further 20-day period is provided to consider whether or not to support the challenge.

e) Reference to ‘C’ Status NHRIs
Participants discussed the reference to ‘C’ status NHRIs in the SCA Rules of Procedure and based on the view that a ‘C’ status institution is not a NHRI and that the designation term may cause confusion and inaccurate perceptions that the term should be removed.

f) Interpretation of ‘immunity’
Participants discussed the difficulty of applying ‘function immunity’ to some legal contexts, and suggested further investigation of its possible application, building upon the General Observations.

RECOMMENDATIONS
1. The following technical statutory amendments are recommended:
   a. Increase the accessibility of ICC statute text through the inclusion of headings and standard numbering to improve the accessibility of the ICC Statute.
   b. A number of amendments to Article 1.1. (Definitions and Interpretation)
      - “Rules of Procedure of the ICC Sub-Committee on Accreditation” mean the Rules of Procedure for the ICC Sub-Committee on Accreditation, originally adopted by the members of the International Coordinating Committee constituted under its former Rules of Procedure at its 15th session, held on 14 September 2004 at Seoul, Republic of Korea, and as subsequently amended”
      - “Regional Coordinating committees” be amended to include the correct names and to add abbreviations;
      - “NIU” be amended to refer to OHCHR
      - The inclusion of a definition of ‘national human rights institution’ that reflects the existing practice of the ICC.
c. Article 31.4 should be amended to ensure consistency with Article 44 and to clarify that Regional Coordinating Committees are responsible for nominating ICC Bureau members.

2. It was recommended that in order to address potential differences in texts that through the ICC Chair, Regional Chairs and Coordinators are requested to facilitate a process in order to determine the accuracy between the different language versions of the ICC Statute with recommendations on how differences, if any, can be addressed.

3. It was recommended that in regard to accreditation the following amendments should be affected to the ICC Statute:
   a) Article 12 should be amended to clarify how days are to be counted in situations where the accreditation provisions in the ICC Statute already impose time limits for certain actions or decisions. Participants noted that in order to ensure all ICC Members have the full period of time to respond, the counting of days should:
      - commence on the day after dispatch of a communication from the ICC secretariat; and
      - conclude at midnight (Geneva time) on the final day.
   b) Article 12(iv) be amended in order to reflect that support for a challenge must be by 4 ICC Bureau members (excluding the applicant / Bureau NHRI). Member and the ICC Secretariat noted that the most efficient way of doing so would be to run one additional 20 day period for all accreditation recommendations that have been challenged and where that challenge has been supported by an ICC Bureau member.

4. The reference to ‘C’ status NHRIs should be deleted from the SCA Rules of Procedure.

5. References to Regional Coordinating Committees and Regional Coordinators in the ICC Statute be reviewed to promote consistency and clarity.

6. The wording of General Observations and recommendations on ‘function immunity’ should be reviewed to consider how it can be applied in practice in diverse legal contexts.

SESSION 3: COMMUNICATION PROCESSES

OBSERVATIONS AND CLARIFICATIONS

During this session, clarification was provided to Roundtable participants on the Communication processes that are currently followed in relation to SCA processes, this included: the statutory requirements set out in the ICC Statute concerning communication; lines of communication and the role of NIRMS; the SCA, the ICC Chair, ICC staff and observers during the SCA Sessions. Arising out of discussions it was clarified that NIRMS plays an important and critical role in the accreditation and recognition of NHRIs.

RECOMMENDATIONS

1. Arising out of the discussions, it was recommended that a number of matters relating to communication could be worked on further with a view to creating greater clarity and certainty, these included the SCA together with NIRMS Secretariat:
a. Considering the issue of confidentiality of those present during sittings of the SCA with a view to amending the SCA Rules of Procedure to create clarity and ensure safeguards for the confidentiality of the process;
b. Further considering the role of Regional Coordinators and ICC staff at SCA meetings; and
c. Assess whether there is sufficient access to information in relation to SCA processes

SESSION 4: OTHER MATTERS RELATED TO ACCREDITATION

OBSERVATIONS AND CLARIFICATIONS

NHRIs under threat
a) It was observed that the nature of threats and challenges facing NHRIs continue to change and increase. The current ICC Guidelines on NHRIs under Threat requires review with a view to updating it in order that there is greater clarity and consistency in responding to NHRIs under threat. The ICC needs to consider its responses to threats and challenges that are faced by NHRIs and in particular how the ICC can provide support to these NHRIs. In addition it was observed that there is a need to create greater clarity on how threats and challenges may impact on the NHRIs accreditation status.

Statements at an international level giving rise to criticism
b) The Roundtable observed that there have been a few instances where NHRIs have used their A status to make statements within the Human Rights Council that are political in nature and outside of the mandate of a NHRI. Such statements have the potential to undermine the reputation of all NHRIs, the ICC and the ICCs Accreditation system as it may imply a lack of independence, gives rise to points of order being made and calls into question whether the NHRI concerned is deserved of its A status. This in turn undermines the ICCs accreditation process.

Engagement by other national bodies at an international level
c) It was observed that there have been a number of instances where the ICC has been approached by independent national bodies that are not A status accredited with the expectation that the ICC may assist in facilitating their appearance and/or speaking rights before a UN body. There was consensus at the Roundtable that where there is more than one independent body at a domestic level that has a human rights mandate that appearance and speaking rights at an international event must be resolved at a domestic level.

Resources
d) The Roundtable received clarification on the financial inputs that are made in order that the SCA may carry out its work. It was observed that the ICC, while relying on the accreditation process, bears none of the cost. The operation of the accreditation process is reliant on substantial contributions from the OHCHR, from individual SCA members’ commissions and from Regional Coordinating Committees.

RECOMMENDATIONS

1. It was recommended that the existing Guidelines on NHRIs under Threat be updated.
2. It was recommended that the ICC drafts an Internal Protocol that clarifies the ICC response to NHRI statements at an international level that could or does give rise to criticism or a point of order.

3. It was recommended that a Guidance Note on NHRI cooperation with other national independent bodies is drafted and that this document includes examples of good practice. The Guidance Note should also identify the approach of the ICC when independent national bodies approach it with a request to participate at the UN under the NHRI umbrella.

4. It was recommended that further work is required in order to address the financial sustainability of the SCA.

**NEXT STEPS RECOMMENDATIONS**
1. The Observations, clarifications and recommendations from the Roundtable should be finalized.
2. A Roundtable Report should be drafted and distributed to all ICC members.
3. A Roadmap should be developed that will clarify roles, responsibilities and timelines in relation to Roundtable recommendations.
CONCEPT NOTE

1. Background
National Human Rights Institutions (NHRIs) are independent official state funded bodies that are constitutionally and/or legally mandated to promote and protect human rights at the national level. In December 1993, the UN General Assembly adopted ‘The Principles relating to the Status of National Institutions’ (UN General Assembly Resolution 48/134 of 20 December 1993 and now commonly referred to as the Paris Principles). These Principles provide a broad normative framework for the status, mandate, structure, composition, power and methods of operation for NHRIs.

In recent years, NHRIs have increasingly gained recognition as partners of the international human rights system. With this recognition, has come the bestowing of participation rights in the Human Rights Council and before treaty bodies as well as other UN processes. In order to ensure that only genuine NHRIs are granted these rights, the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) has established an accreditation process through a Subcommittee on Accreditation (SCA), as provided for in the ICC Statute. The SCA conducts the review of NHRIs compliance with the Paris Principles and submits its accreditation recommendations, based on the level of compliance with the Paris Principles, both legally and in practice, to the ICC Bureau, the ICC’s key decision making body. Article 6 of the ICC Statute stipulates that “general meetings of the ICC, meetings of the ICC Bureau and of the SCA, as well as international conferences of the ICC shall be held under the auspices of, and in cooperation with, OHCHR”. The National Institutions and Regional Mechanisms Section (NIRMS) of the Office of the United Nations High Commissioner for Human Rights (OHCHR) acts as the SCA Secretariat in order to enhance the credibility of the accreditation process before the international human rights systems.

Sections 6.2 and 6.3 of the SCA Rules of Procedure provide the SCA with authority to develop General Observations on common and important interpretative issues and the implementation of the Paris Principles. The latest updated General Observations were adopted by the ICC Bureau during its May 2013 meeting in Geneva. Over the years, there have been a number of matters relating to accreditation that have required clarification in order to strengthen the process. The ICC Bureau decided in October 2014 that a special Accreditation Roundtable be held prior to the next ICC Bureau and annual General Meeting in March 2015 in order to strengthen the accreditation process by seeking clarification and where necessary solutions to various issues that have arisen in recent times. It was also decided that participants at the roundtable would include the ICC Chair, ICC Bureau members, SCA members, OHCHR NIRMS and external stakeholders.

2. Objectives and expected outcomes
The Roundtable is part of a continuous process within the ICC to strengthen its accreditation process. The ICC regularly holds events related to the accreditation process such as side events and panel discussions at its annual General Meetings; ensuring that there are regular discussions between Regional Chairpersons; and ICC Bureau and SCA members. There is an on-going need to evaluate the accreditation process and when and where necessary to make changes to strengthen the system thereby ensuring its greater legitimacy, effectiveness, rigorousness and transparency.

The Roundtable is not an opportunity to discuss individual NHRI concerns with the accreditation process. Rather, it is an opportunity to have an objective discussion about the accreditation process in order to create a common understanding through clarification of the process and identifying where the system requires strengthening.
The Roundtable aims at putting together a set of recommendations for implementation to strengthen the accreditation process by ensuring that any legal gaps are addressed and the rules and working methods are understood by all interested parties, including NHRIs. Through an organization wide consultation process the following matters, falling under four main categories, will be considered during the Roundtable:

i. **SCA Procedures**
   - Over time a number of informal practices and policies have developed within the SCA. There is a need to identify these, determine whether they strengthen the accreditation system and where necessary adopt and formalize through proposals to amend the ICC Statute, ICC Rules of Procedure and/or ICC General Observations. This is necessary in order to remove misunderstandings of the process.
   - Various matters that impact on accountability and transparency within the accreditation process have been identified for discussion such as: the nature and quality of documentation presented during the decision-making process; access by affected parties to information used during the SCA accreditation process; the nature and status of written and oral submissions and other actors which the applicant does not have the benefit of seeing and/or hearing; the decision-making process within the SCA; the process of publishing and disseminating the outcome recommendations and final reports;
   - The SCA decision to downgrade an NHRI where there is a lack of compliance with the Paris Principles, the instances in which this is done and the considerations that are taken into account, including the impact on the affected NHRI;
   - The Special Review process including clarification on the necessary thresholds that must be present to commence a Special Review and whether there are sufficient due process guarantees within this process;
   - The role of civil society actors in the accreditation process; including the processes for seeking and managing contributions from these stakeholders;

ii. **Interpretation Matters**
   - The Roundtable will consider manners in which the interpretation of the ICC Statute and SCA Rules of Procedure can be strengthened; for example the ICC Statute currently does not have a standard interpretation clause which can lead to potential interpretation conflicts when there are differences in language between the various translated versions of the Statute;
   - Also, various technical statute interpretation issues will be discussed relating to the counting of days, and the formal requirements for submitting and lodging documents with the SCA;
   - Also, there is a need to identify the extent to which there are differences between the various translated language versions of the ICC Statute; these differences need to be identified and corrected in order to lessen the instances of conflict of interpretation;

iii. **Communication processes**
   - Whilst the roles of NIRMS and the ICC SCA within the accreditation system are understood amongst each other, the Roundtable will seek to broaden this understanding amongst the ICC leadership and where necessary record these roles in order that there may be an institution-wide understanding thereof;
   - The Roundtable will discuss and clarify lines of communication in relation to the accreditation process, including communication between the SCA Secretariat and
iv Other matters related to accreditation

- The Roundtable will discuss matters that are potentially related to accreditation such as: NHRIs under threat, experiencing reprisals or operating under difficult circumstances and the interaction thereof with the NHRIs accreditation standing; statements by ‘A’ status NHRIs at an international level that violate the principle of independence calling into question the accreditation process and whether the SCA should become involved in such matters; and the relationship between ‘A’ status NHRIs and other independent national bodies from the same country when engaging at an international level (ICC Bureau decision October 2014);
- Finally, the Roundtable will seek to identify the current in kind contributions by SCA members and additional support that is required by the SCA in terms of capacity, resources, institutional memory, and interpretation.

The expected outcome of the Roundtable will be an increased and deepened understanding of all aspects of the accreditation process amongst the ICCs key decision makers and those directly involved therewith. In addition, the Roundtable will adopt a set of concrete outcomes and recommendations that will identify those areas in which improvements to strengthen the accreditation system should be made; including identifying the manner in which the recommendations will be implemented. These outcomes and recommendations will be presented to the ICC Bureau for consideration and where necessary adoption. Finally, initial feedback will be provided to the broader ICC membership at the annual General Meeting followed by the distribution of a Roundtable report. The broader ICC membership will be involved as required in terms of the ICC Statute (e.g. ICC statutory amendments).

3. Convenor
   The Roundtable will be convened and hosted by the ICC and OHCHR/NIRMS.

4. Participants
   There will be approximately 30 persons including the ICC Chair, the four Regional Chairpersons and Coordinators, ICC Bureau Members, members of the Subcommittee on Accreditation, OHCHR and UNDP, and 3 persons with expertise and in depth knowledge of the accreditation system.

5. Working languages
   The working languages of the Roundtable will be the four official ICC languages, namely: English, Spanish, French and Arabic. Provision of interpretation services will be dependent upon the participants’ needs.

6. Documentation
   Two weeks prior to the Roundtable meeting, documentation will be circulated in the four official ICC languages. NHRIs are invited to consult at a regional level and to provide their comments, suggestions and questions to their Regional Coordinators.

7. Funding
   NIRMS will secure a venue for the Roundtable and the ICC will be responsible for the costs of interpretation and translation of documents.
AGENDA

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

ROUNDTABLE
‘STRENGTHENING THE ICC ACCREDITATION SYSTEM’

Room XXV, Palais des Nations, Geneva, Switzerland
Tuesday, 10 March, 2015

hosted by
the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights & the Office of the High Commissioner for Human Rights

Agenda

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<th>Time</th>
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| 10h00 – 11h30| SESSION 1 SCA PROCEDURES    | Adv Mabedle Lourence MUSHWANA, ICC Chair      | Vladlen STEFANOV, Chief, NIRMS
|              |                              |                                               | Dr David LANGTRY, Chairperson of the ICC SCA (Canada)                                              |
|              |                              |                                               | Dr Sisi, Afarin SHAHIDZADEH, Deputy Chief, NIRMS & Secretary SCA                                     |
| 11h30 – 13h00| SESSION 2 INTERPRETATION MATTERS| Dr. Ali bin Smaikh AL MARRI, Regional Chair, Asia Pacific (Qatar) | Mr Greg HEESOM, Asia-Pacific Forum
|              |                              |                                               | Dr Sisi, Afarin SHAHIDZADEH, Deputy Chief, NIRMS & Secretary SCA                                     |
| 13h00 – 15h00| LUNCH                        |                                               |                                                                                                |
| 15h00 - 16h15| SESSION 3 COMMUNICATION PROCESSES | Dr Divine BANDA, ICC Regional Chair – Africa (Cameroon) | Dr Sisi, Afarin SHAHIDZADEH, Deputy Chief, NIRMS & Secretary
|              |                              |                                               | Dr David LANGRTY, SCA Chair, (Canada)                                                               |
|              |                              |                                               | Judith COHEN, ICC Liaison Officer (South Africa)                                                    |
|              |                              |                                               | Katharina ROSE, ICC Geneva Representative                                                         |
|              |                              |                                               | Gilbert SEBIHOOGO, Regional Coordinators, NANHRI                                                   |
| 16h15 – 17h30| SESSION 4 – OTHER MATTERS RELATED TO ACCREDITATIONS | Prof Alan Miller, ICC Secretary (Scotland) | Katharina ROSE, ICC Geneva Representative
<p>|              |                              |                                               | Vladlen STEFANOV, Chief, NIRMS                                                                      |</p>
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<td>17h30 – 17h50</td>
<td>ADOPTION OF ROUNDTABLE CONCLUSIONS AND RECOMMENDATIONS</td>
<td>Presentation and adoption of Conclusions and Recommendations, Vivian JOHN - LANGBA, ICC Assistant Liaison Officer (South Africa)</td>
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<td>17h50 – 18h00</td>
<td>CLOSURE OF ICC ACCREDITATION ROUNDTABLE</td>
<td>Adv. Mabedle Lourence MUSHWANA, ICC Chair (South Africa)</td>
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DISCUSSION PAPERS
The discussion papers annexed to this report merely outlined the issues for discussion and are attached hereto for reference
SESSION 1 - SCA PROCEDURES

The Sub-Committee on Accreditation (SCA) conducts its work based on the provisions of the ICC Statute, the SCA Rules of Procedure, and the General Observations.

The SCA strives to ensure the process it follows is rigorous, transparent and fair. The following is intended to provide Roundtable participants with a description of the manner in which the SCA conducts its work and makes decisions or recommendations. It discusses certain issues that have been raised as being of particular concern.

At the outset, it is perhaps important to note article 59 of the Statute:

_The Sub-Committee on Accreditation and the Rules of Procedure for the ICC Sub-Committee on Accreditation are by this Statute continued in existence, and shall remain in existence until amended or revoked by the ICC Bureau. The Sub-Committee on Accreditation is hereby constituted as a sub-committee of the ICC Bureau. The Rules of Procedure for the ICC Sub-Committee on Accreditation are incorporated into this Statute as Annex 1._

The SCA welcomes improvements and clarifications to its processes and looks forward to the outcomes of this Roundtable which may lead to amendments to the Statute, the Rules of Procedure and / or the General Observations.

A. COMPOSITION OF THE SCA

The composition of the SCA is provided for in article 2 of the Rules of Procedure.

The SCA is composed of one NHRI accredited with A status from each of the four regional groups. Members of the SCA are appointed by regional groups for a term of three years.

The Chair of the SCA is selected for a term of one year (renewable a maximum of two times) on a rotational basis from within the SCA such that each region assumes its turn in office.

The National Institutions and Regional Mechanisms Section of OHCHR (NIRMS) is a permanent observer to the SCA and supports the SCA by acting as Secretariat.

Regional representatives and the ICC Geneva Representative also serve as observers to the SCA.

B. PRIOR TO THE SCA SESSION

In accordance with article 10 of the Statute, an NHRI seeking accreditation / re-accreditation sends its application to the ICC Chairperson through the ICC Secretariat (NIRMS). An NHRI is required to provide a detailed statement of compliance with the Paris Principles, a copy of its enabling law, an outline of its organizational structure including its staff complement and its budget, and a copy of its most recent annual report.

In some instances, NIRMS also receives submissions from civil society in relation to the accreditation / re-accreditation application of an NHRI. The handling of such submissions is dealt with in greater detail below.
The material received by NIRMS is posted on a secure portal of the ICC website. Passwords to access this portal are provided by NIRMS to SCA members, Regional Representatives and the ICC Geneva Representative.

Based on the information received, NIRMS prepares a summary of the NHRI under review and identifies issues of concern for the consideration of the SCA. The summary also includes relevant information emanating from the UN system (treaty bodies, Special Procedures, UPR).

Each summary prepared by NIRMS is sent to the NHRI concerned to ensure that it is factually accurate. After any necessary changes are made, the summaries are posted on the secure portal for the information of SCA meeting participants.

The Canadian Human Rights Commission (CHRC) also conducts a review of the documentation submitted and prepares a grid for the benefit of its Acting Chief Commissioner David Langtry, who is currently the SCA member representing the Network of the Americas and is also the current Chair of the SCA. In conducting this analysis, the CHRC relies on the material provided by the NHRI, and also consults a limited number of external sources of information that it considers to be credible, including the annual US State Department human rights report, and reports from Amnesty International and Human Rights Watch. The grid is cross-referenced to the posted NIRMS summary to ensure its factual accuracy.

The CHRC grid is circulated to SCA members, Regional Representatives and NIRMS for their information in advance of the session.

Specific issues of concern:

1. Submissions from Civil Society
   In accordance with article 3.6 of the Rules of Procedure:
   Any civil society organization wishing to provide relevant information pertaining to any matter before the Sub-Committee shall provide such information in writing to the ICC Secretariat at least four months prior to the meeting of the Sub-Committee [emphasis added].

   The Rules of Procedure do not limit the right to make a submission to only those NGOs recognized by the UN system or by regional organizations, or those who meet certain criteria.

   Any submission received by an NGO is forwarded to the NHRI concerned for its review and comment. The SCA relies on the NHRI to make it aware of any concerns it has about the accuracy or credibility of the information contained within the submission, or about the credibility of the NGO itself.

   The weight given to any information provided by an NGO or group of NGOs is determined on a case-by-case basis by the members of the SCA, taking into account that an effective NHRI can expect to face criticisms both from government and from civil society. The SCA makes every effort to ensure that frivolous or unsubstantiated allegations are not taken into consideration in determining the accreditation status of an NHRI.

C. At the SCA Session
   The SCA meets for one week in Geneva twice per year for one week. The following individuals are present at the SCA session: the four SCA members, with a support person where applicable; Regional Representatives; NIRMS; and the ICC Geneva Representative.
For each NHRI under review, the SCA employs the same process:

1. The NIRMS individual responsible for preparing the summary provides a presentation describing the NHRI under review and outlining any issues of concern.
2. A desk officer from OHCHR provides a presentation describing the general human rights situation in the country and detailing any interactions it has had with the NHRI under review. Issues arising from this practice are discussed in greater detail below.
3. The participants discuss what questions they would like to ask the NHRI under review during the scheduled teleconference.
4. The NHRI under review is interviewed by telephone. During this interview, the Chair of the SCA poses the decided-upon questions. The NHRI is also provided an opportunity to provide any additional information that it would like the SCA to know prior to making a decision.
5. The Regional Representative from the NHRI’s regional grouping provides any additional information that they feel will be of use to the SCA in making a decision. The ICC Geneva Representative may also provide information where appropriate.
6. The members of the SCA discuss their views on the application, taking into account 1) the application itself, 2) the NIRMS analysis, 3) any relevant information provided by OHCHR and the Regional Representative, and 4) the additional information and explanation provided by the NHRI under review.

Following these discussions, the SCA either decides to 1) recommend that the ICC Bureau accredit the NHRI with A, B or C status or 2) defer a decision on the application to a future session. The matter of deferrals is discussed in greater detail below. The SCA also decides what recommendations it will make to the NHRI.

Though the discussion regarding the accreditation status of an NHRI takes place in the presence of all SCA participants, a decision on an accreditation recommendation is taken by the four SCA members alone. SCA members strive for consensus on such decisions.

Based on the instructions provided by SCA members, a draft of the SCA’s decision and recommendations is prepared by NIRMS at the end of each day. A line-by-line review of the draft SCA report in the presence of all participants is undertaken on the final day of the SCA session. The final draft is circulated to all members by NIRMS for final review and approval prior to notifying the NHRI involved of the outcome of the review.

**Specific issues of concern:**

1. **Oral Submissions from OHCHR**
   OHCHR provides a briefing on the human rights situation in the country of the relevant NHRI. SCA members have found these to be helpful and to provide important contextual information. The SCA would, therefore, recommend the continuance of this process.

   It is important to note that if new information regarding the NHRI under review is raised and is of concern to SCA members, the NHRI is provided an opportunity to respond to this information.

2. **In-camera sessions**
   At a previous session, the SCA decided to pilot a new practice whereby, as always, a full discussion of the application was held, presentations were made, and the NHRI interview in the presence of the Secretariat and the Regional Representatives. At that point, the final decision on accreditation recommendations was taken by the SCA members *in camera*. The SCA felt that
it may be important to do this to be able to avoid any perception of influence in the decision-making process by anyone other than the SCA members themselves.

This practice was not continued at subsequent sessions.

3. Deferrals
The SCA had, in the past, adopted a practice of re-examining certain issues of concern in a period of less than five years. That is, at times accreditation/re-accreditation with A status was recommended, with some issues of particular concern being reviewed in one, two or three years rather than the cyclical five-year period. However, this practice was successfully challenged and the SCA ceased conducting such interim reviews.

The SCA proposed that an amendment be made to the ICC Statute to allow it to re-examine certain issues relating to an NHRI in a period of less than five years. This proposal was not viewed favourably by a number of NHRIs and, accordingly, it was abandoned.

As a result of abandonment of this practice, there have recently been a greater number of deferrals. These deferrals have generally been undertaken to provide an opportunity for the NHRI under review to address certain issues of concern to the satisfaction of the SCA. These may be new issues, or they may be issues identified in a previous review of the NHRI that have remained unaddressed since that time. It should be noted that, in many cases, the alternative to a deferral would have been to place the NHRI in question under notice of intention to downgrade to B status in one year should the issues of concern not be addressed to the satisfaction of the SCA.

An example of this is where legislation is being proposed or considered which would result in an otherwise B status institution becoming A status following passage of the legislation. It is often difficult or impossible to have significant legislation developed, received, debated and passed within one year. The SCA has, therefore, deferred such applications to provide additional time for the NHRI under review to advocate for the adoption of such legislation by parliament.

It is important to note that, in cases where legislative amendments are pending, the SCA will undertake an analysis of whether the NHRI would still be considered A status even if the legislative amendments are not passed. In cases where the NHRI would be considered A status in any event, the SCA would not be likely to defer the application.

It should also be noted that the SCA is of the view that a decision to defer an application is not an accreditation recommendation under Article 12 of the Statute, but rather is an administrative action taken in accordance with Article 11.2 of the Statute. As such, a decision of the SCA to defer an application is not subject to the challenge provisions articulated in Article 12 of the Statute.

Proposal: The SCA will formalize its criteria for deferrals in the revised Rules of Procedure.

4. Decision to Initiate a Special Review
Article 16.2 of the Statute provides that:
Where, in the opinion of the Chairperson of the ICC or of any member of the Sub-Committee on Accreditation, it appears that the circumstances of any NHRI that has been accredited with A status under the former Rules of Procedure may have changed in a way which affects compliance with the Paris Principles, the Chairperson or the Sub-Committee may initiate a review of that NHRI’s accreditation status.
Currently, a decision to initiate a Special Review is taken on a case-by-case basis based on the nature of the information received. In line with its responsibility to safeguard the credibility and rigour of the accreditation regime, the SCA has interpreted a “change in circumstances” in a broad way. In the past, the SCA has considered whether to initiate a Special Review based on various factors, for example, where it has received information received from external sources, including UN mechanisms, civil society or credible media reports, or where there has been a significant change in the political situation in the country in which the NHRI operates.

It should be noted that the SCA on many occasions considers information relating to a particular NHRI at its session and decides not to initiate a Special Review. Should the SCA so decide, there is no mention of this in the SCA report. That is, the Bureau, ICC and public would not be aware that the SCA has reviewed information about an NHRI and decided that this information is insufficient to warrant a Special Review. The SCA is of the view that the NHRI should not, in those circumstances, be named in the report and should only be named should the SCA determine that a Special Review is warranted. This is done to protect the reputation of the NHRI from what the SCA considered to be unfounded, unsubstantiated or misinformed criticism.

In all circumstances where the SCA is considering whether or not to initiate a Special Review, the SCA ensures that the NHRI in question is made aware of the reasons for such consideration – including providing any information it has received from external sources – and is afforded an opportunity to provide the SCA with its position on the matter.

Where the decision to initiate a Special Review is made, the NHRI in question is provided with ample opportunity to establish its ongoing compliance with the Paris Principles.

Proposal: The SCA will formalize the process it uses to decide whether or not to initiate a Special Review in the revised Rules of Procedure.

5. Impact of a Downgrade

Where significant issues are identified that impact upon an A status NHRI’s continued compliance with the Paris Principles, the SCA’s preferred approach to date has been to make the NHRI in question aware of those issues and to provide an opportunity for the NHRI to demonstrate its continued compliance. As discussed above, this is often achieved through a deferral of a re-accreditation application.

However, the SCA may recommend that the status of an NHRI be downgraded where it does not appear that progress will be made in addressing the SCA’s concerns, or where the continued maintenance of an A status would bring into question the legitimacy of the accreditation process.

The SCA recognizes the negative impact that notification of an intention to downgrade its status may have on an NHRI. It further recognizes that, in certain circumstances, an NHRI does not comply with the requirements of the Paris Principles not through any fault of its own, but rather due to the action or inaction of government. The SCA must, nonetheless, make its decisions based on an impartial analysis of whether or not an NHRI is operating in compliance with the requirements of the Paris Principles. To do otherwise would be to call into question the credibility of the ICC and to jeopardize the progress that has been made in having the important work of NHRIIs recognized in important international fora.
D. **FOLLOWING THE SCA SESSION**

Following the session, the accreditation recommendations of the SCA are forwarded to the NHRIIs under review pursuant to article 12 of the Statute. Where the SCA has decided to defer an application or to initiate a Special Review, the SCA notifies the involved NHRI as such.

In accordance with article 12, an NHRI can challenge the accreditation recommendation of the SCA. It should be noted that the SCA takes the view that only recommendations made under article 12 of the Statute are open to be challenged. As such, decisions of the SCA to defer an application or to initiate a Special Review are not open to challenge.

An NHRI can submit a written challenge to the ICC Chairperson within 28 days. A scanned signed letter to the Secretariat has sufficed in the past. If a challenge has been received, the ICC Secretariat will forward the challenge and relevant material to the Bureau. Any Bureau member who disagrees with the recommendation of the SCA — in other words, supports the challenge of the applicant NHRI — must notify the ICC Chairperson and the ICC Secretariat within 20 days. Thereafter, the ICC Secretariat will notify all Bureau members of the support for the challenge. If within 20 days of receipt of this information at least four members of the Bureau representing at least two regional groupings support the challenge, the recommendation of the SCA will be referred to the next Bureau meeting for decision. The Bureau will then make a decision on the accreditation status of the NHRI, which is final and not subject to a further challenge.

It should be noted that the SCA has taken the view that a Bureau member cannot challenge a decision that has not been challenged by the NHRI concerned. The SCA also takes the view that a Bureau member cannot, on behalf of other Bureau members, support a challenge, as the Statute does not reference the possibility of an NHRI acting on behalf of other NHRIIs.

If no challenge is received from an applicant NHRI during the initial 28 day period, or if a received challenge does not receive the required support from Bureau members, the recommendations of the SCA are deemed accepted by the Bureau in accordance with article 12. The SCA report is then posted on the ICC’s website.

**Proposal:** The SCA will draft proposed amendments to Article 12 of the Statute and circulate for comment. These amendments will clarify that: 1) a recommendation that has not been challenged by the applicant NHRI cannot be challenged by a Bureau member; and 2) each NHRI must individually attest to its support of a challenge.

**Proposal:** The SCA will draft proposed amendments to Article 16 of the Statute and circulate for comment. This amendment will clarify that: 1) a decision to undertake a Special Review is a decision of the SCA rather than a recommendation of the SCA to the Bureau; and 2) such a decision is not open to the possibility of a challenge.

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1 This issue will be discussed by the Bureau on 11 March 2015.

2 This issue will be discussed by the Bureau on 11 March 2015.

3 This issue will be discussed by the Bureau on 11 March 2015.
SESSION 2: INTERPRETATION MATTERS

INTRODUCTION
Session 1 of the Accreditation Roundtable will focus closely on the practice and procedure of the Sub-Committee on Accreditation, and the role of the ICC Bureau in the accreditation process.

The purpose of Session 2 however is to identify other elements in the ICC Statute that relate to or have an impact on the accreditation process, and to consider if there is a case to adopt amendment that would reduce ambiguity and create greater certainty.

Section 1 below deals with technical amendments to the ICC Statute generally.

Section 2 below deals with several technical amendments to Article 12 of the ICC Statute that relate specifically to the accreditation process.

SECTION 1: TECHNICAL CORRECTIONS
This section deals with 6 areas where technical amendments may be considered:

(i) Accessibility of ICC statute text
(ii) Amendments to the interpretation section
(iii) Name of the ICC
(iv) Consistency between provisions dealing with the nomination of ICC Bureau members
(v) Role of OHCHR/NIU/NIRMS
(vi) Accreditation classifications

Where changes to the existing text of the statute is proposed, the additions are marked in red and deletions in strikethrough

1. ACCESSIBILITY OF TEXT
Issue: The Statute could be improved by including headings and by formalising the numbering of sub-Articles.

Headings: Legislative drafters use headings for individual articles or groups of articles to indicate the scope of the provisions that follow. Headings are subsequently used in tables of contents to improve accessibility.

Numbering: Legislative drafters use numbering to clarify text, including by separating different elements or concepts in individual articles. There are various provisions in the ICC Statute that do not use this standard numbering and the general accessibility, and capacity to reference individual elements of the text could be improved by correcting this.

Relevant articles may include: 1.1, 2, 7, 10, 12, 18.4, 20, 23, 25, 33, 34, 36, 38, 39, 40, 46, 47, 49, 53

2. CORRECTIONS TO THE INTERPRETATION PROVISION - ARTICLE 1.1
2.1 Correction to the interpretation of Rules of Procedure
Issue: The Statute refers to the Rules of Procedure of the ICC Sub-Committee on Accreditation as adopted in 2008. The provision should be drafted so as to recognise future amendments to the RoP.

Proposal: The proposal would be as follows:

“Rules of Procedure of the ICC Sub-Committee on Accreditation mean the Rules of Procedure for the ICC Sub-Committee on Accreditation, originally adopted by the members of the International Coordinating Committee constituted under the its former Rules of
2.2 Correction to the names of the Regional Coordinating Committees

Issue: To correct the names of the Regional Coordinating Committees and include abbreviations.

Proposal: The proposal would be as follows:

“Regional Coordinating Committee means the body established by NHRLs in each of the regional groupings referred to in Section 7 of this Statute to act as their coordinating secretariats, namely:

- Asia Pacific Forum of National Human Rights Institutions (APF);
- European Network Coordinating Committee of National Human Rights Institutions (ENNHRI);
- Network of African National Human Rights Institutions (NANHRI), and
- Network of National Human Rights Institutions of the Americas (XXXX);”

2.3 Amendment to the name and interpretation of ‘NIU’

Issue: Article 1.1 currently defines the ‘NIU’ as the National Institutions Unit of the Office of the United Nations High Commissioner for Human Rights. Article 46 provides defined roles for the NIU. The office has already been renamed the National Institutions and Regional Mechanisms Section (NIRMS) and under recent internal changes it is understood that NIRMS has been moved to another section of OHCHR and that this may entail a further change of name.

Proposal: Include a generic name change in the interpretation section and amend Article 46 accordingly. Advice will be sought from NIRMS as to an appropriate reference.

2.4 Defining the term ‘national human rights institution’

Issue: The term ‘national human rights institutions’ is not defined in the Statute and the ICC receives applications for membership and accreditation from a range of other human rights organisations.

The ICC has previously sought advice and has adopted the interpretation of the term ‘national human rights institution’ as referring to:

- an independent State institution;
- established:
  (i) in constitutional or legislative text;
  (ii) by the government of a State that is recognised by, or is a member of the United Nations; and
- with a mandate to monitor, promote and protect human rights.

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4 The ICC receives applications for membership and accreditation from human rights organisations established by:

- sub-national (provincial) governments;
- municipal or local government;
- city councils;
- dependent territories;
- territories seeking independence from UN recognised states;
- autonomous regions within UN recognised states.

5 Note: this latter element does not detract from the State’s primary obligation to ensure that the human rights of all those within its territory are respected and protected.
The SCA and ICC Bureau currently use this interpretation in determining applications for membership and accreditation.

Proposal: That participants consider whether an interpretation of ‘national human rights institution’ should be included in the ICC statute.

2.5 Absence of an Interpretation Clause

Issue: There have been suggestions that the translation of the ICC Statute into four languages has resulted in a small number of provisions with different meanings. In the absence of an interpretation clause, there is no way of determining whether differences exist and if so, what interpretation is authoritative.

Proposal: In order to address this concern the ICC will need to identify provisions where a different meaning may exist, determine the preferred interpretation, and propose amendments to the existing ICC Statute to address the text amended accordingly.

Once these issues have been resolved, and amendments agreed upon, an interpretation clause can be inserted in the ICC Statute. On the basis that the original text was developed in English and was subsequently translated into the additional three ICC languages, the English language version should presumably be considered the definitive text.

3. ARTICLE 2 – NAME OF ICC:

Issue: The existing article names the organisation as the “Association International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights”. Given confusion over the name, and over the acronym ‘ICC’ which is associated with a number of other international organisations, it has been suggested that a change of name be considered.

Proposal: No action. This is being dealt with separately by the ICC Chairs office and through the current Communications Project.

4. CONSISTENCY BETWEEN ARTICLE 31.4 AND 44.

Issue: Articles 31.4 and 44 deal with elections to positions on the ICC Bureau. Article 31.4 does not indicate clearly who is responsible for nominating and appointing members to the ICC Bureau, whereas Article 44 clearly provides that it is the function of the Regional Coordinating Committees to nominate members to the ICC Bureau.

Proposal: In order to ensure consistency in 31.4 and Article 44, it is proposed that Article 31.4 be amended as follows:

“Through its regional coordinating committee, each regional group is to appoint four (4) members accredited with an ‘A’ status which shall each have a representative on the ICC Bureau.

5. ROLE OF OHCHR / NIU / NIRMS

Issue: Article 1.1, 6 and 11.1 provides refer to various ICC meetings and activities being held “under the auspices of, and in cooperation with, OHCHR”. In addition, Article 46 refers to NIRMS’ role to “facilitate and coordinate the participation of NHRIs in the Human Rights Council, its mechanisms, and the United Nations human rights treaty bodies”.

There is a need to define OHCHR’s role and what is meant by ‘under the auspices of, and in cooperation with’, and “facilitate and coordinate the participation” in each of these articles.
Proposal: This will be dealt with in Session 1 and 3 where the Role of NIRMS will be explored. Depending on discussion in that session, amendments to the ICC Statute or relevant Rules of Procedure may be required.

6. ACCREDITATION CLASSIFICATIONS:

Issue: The articles in the ICC Statute refer to A and B accreditation. ‘C’ status accreditation is not mentioned. However, ICC SCA Rule of Procedure 5 (which pre-dates and is annexed to the ICC Statute) provides for ‘A’, ‘B’ and ‘C’ accreditation as follows:

- “A”: Voting member – Fully in compliance with the Paris Principles
- “B”: Non-voting member - Not fully in compliance with each of the Paris Principles or insufficient information provided to make a determination;
- “C”: No status – Not in compliance with the Paris Principles

There are currently 10 organisations that have previously been accredited as having C status. Of these, it appears that the SCA was of the view that eight were not NHRI but were other types of organisations, as follows:
- 2 were government agencies (Switzerland),
- 2 were mal-administration Ombuds institutions (Antigua and Barbuda (2001) and Barbados (2001))
- 1 is an civil society organisation established by the judiciary (Iran (2000)),
- 1 is a human rights organisation established by a sub-national government (Hong Kong (2000)),
- 1 is an institution established by an unincorporated territory of a UN Member State (Puerto Rico (2007))
- 1 appears to exercise a role as a government coordinating agency for human rights, rather than an independent NHRI, (Romania (2011)).

The remaining 2 ‘C’ institutions were presumably NHRI but no longer appear to exist and are not members of their regional group (Benin (2002) and Madagascar 2006)). It should be noted that these were accredited prior to the incorporation of the ICC under statute and the General Observations.

The inclusion of ‘C’ accreditation creates confusion in several areas:
- The current ‘A’ and ‘B’ accreditation classifications cover all national human rights institutions that are either fully or in partial compliance with the Paris Principles. There appears to be no need for a ‘C’ status.
- ICC membership and subsequent member rights are based on accreditation. Only ‘A’ and ‘B’ accredited NHRI can be members of the ICC
- the ICC does not have a mandate to accept applications for membership from non-NHRI
- the ICC does not have a mandate to accredit non-NHRI

The confusion in the use of the ‘C’ status is evident in the ICC’s Chart on the Status of National Institutions⁶ which lists the current number of NHRI as 108 though it would appear that the 10 listed above are in fact not NHRI or no longer in existence.

Finally it is noted that the Statute (Article 9) already makes provision for the ICC to permit non-NHRI observers to participate in the ICC’s activities as observers.

Proposal: ‘C’ status should be removed from the SCA Rules of Procedure

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SECTION 2: ACCREDITATION (ARTICLE 12)

As mentioned in the introduction section above, Session 1 on SCA procedure will consider various aspects of the accreditation process.

However, certain technical amendments can be considered in relation to Article 12, since these have already been the subject of discussion at previous ICC Bureau meetings. These issues are outlined in the following sections below:

(2.1) how are days to be counted;
(2.2) can an ICC Bureau member support their own challenge to an accreditation recommendation;
(2.3) How is the additional 20 day period in Article 12(iv) to be implemented in a way that is administratively effective
(2.4) What information is to be provided to ICC Bureau members when an ICC Bureau member supports a challenge.

The process for ICC Bureau consideration of an SCA accreditation recommendation is set out in Article 12 of the ICC Statute. It provides as follows:

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

[Note: The inclusion of sub-paragraph numbers has been added for ease of reference]

2.1 Counting of days

Issue: Members have raised concerns about the counting of days where the ICC Statute imposes deadlines for accreditation correspondence.
Communications are sent electronically and the current practice is that days are counted from the date of dispatch.

Proposal: In order to ensure that members both east and west of the international date line have the full period to respond, it is proposed that counting starts on the day after dispatch and finishes at midnight in Geneva on the last counting day.

Example:
Email correspondence is sent to an NHRI at 5PM on 31 January 2015 from Geneva and the Statute requires that members respond in 28 days. Counting will begin at 9AM on 1 February 2015 and a response must be received in Geneva by 11:59 PM on 28 February (the 28th day).
In this example:
- Samoa in the far east will have 28 days and 3 hours to respond;
- Switzerland will have 28 days to respond;
- Mexico City in the far west will have 28 days and 7 hours to respond

2.2 Can an ICC Bureau member support their own challenge to an accreditation recommendation

**Issue**: The majority of ICC members are not ICC Bureau members and they require the support of 4 ICC Bureau members to uphold a challenge to an accreditation recommendation.

In order to ensure fairness and equal treatment for all members, and to uphold the integrity of the ICC Bureau review process, it is suggested that an ICC Bureau member should not be able to support their own challenge. Like all other ICC members, they too should require the support of 4 separate ICC Bureau members to uphold their challenge.

**Proposal**: That article 12(iv) be amended to require that a challenge to an accreditation recommendation is only upheld if it is supported by 4 ICC Bureau members from more than two regions (excluding the applicant NHRI).

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2.3 Additional time for consideration of a challenge supported by an ICC Bureau member

**Issue**: Article 12(iv) provides for an additional 20 day period to run where an ICC Bureau member supports an accreditation challenge. This allows other ICC Bureau members to give additional consideration to such recommendations.

In order to avoid a multiplicity of additional deadlines, and to ensure the process can be administered effectively by the Secretariat, it is suggested that one additional 20 day period run concurrently for all accreditation applications that are supported by an ICC Bureau member.

**Proposal**: That article 12(iv) be amended to specify that, at the conclusion of the initial 20 day review period, an additional 20 day review period applies to all accreditation challenges that have been supported by an ICC Bureau member.

**Example**:  
ICC Bureau members receive the SCA’s accreditation recommendations on 31 January. ICC Bureau members have until 20 February to support any challenges.

Accreditation recommendations that have not been challenged are finalized on 21 February.

Accreditation recommendations that have been challenged, but not supported by an ICC Bureau member are also finalized on 21 February.

Where an accreditation recommendation has been challenged and has been supported by at least one ICC Bureau member within the initial 20 day period, all ICC bureau members are notified, provided with any additional accreditation documentation that may be relevant and an additional 20 day period begins to run in order to allow ICC Bureau members to consider further the accreditation recommendation and grounds for challenge.

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2.4 What information is to be provided to ICC Bureau members when an ICC Bureau member supports a challenge
**Issue:** Where an accreditation recommendation has been challenged and supported by an ICC Bureau member, Article 12(iv) provides that the ICC Secretariat will promptly notify all ICC Bureau members of the objection raised and will provide all necessary information to clarify that objection. At the same time as it dispatches the SCA’s report to the ICC Bureau (at the beginning of the first 20-day period), the Secretariat also provides all ICC Bureau members with electronic copies of:
- the applicant NHRI’s Statement of Compliance
- the Secretariat’s summary; and
- the challenge documentation

**Proposal:** Since all documentation submitted by the applicant as well as the Secretariat summary and any other submissions are available electronically, the Secretariat could provide the ICC Bureau members with access to all documentation relevant to an SCA accreditation recommendation either - at the start of the ICC Bureau review; or - once an ICC Bureau member notifies the Secretariat of their support for a challenge to an SCA recommendation.
This would allow ICC Bureau members to review actual legislation, annual reports and similar documents and allow them to better assess whether to uphold an SCA recommendation or support a challenge.

**Note 1:** This can be addressed by changes to the SCA rules of procedure and does not require a change to the ICC Statute. Note also that since documentation is available electronically it can be sent by email.

**Note 2:** One potential difficulty with this proposal is that the size of some documents (such as annual and other reports) may be too large for an ICC Bureau members email exchange. In the past this has led to emails being rejected. IT assistance may need to be sought to resolve this issues or to propose other solutions.
SESSION 3: COMMUNICATION PROCESSES

SESSION PURPOSE – Clarify lines of communication and the roles of the different parties involved in the accreditation and associated processes.

SESSION OUTCOMES
- A practical understanding of the communication processes related to Accreditation
- A description of the types of communication in order that this can inform future members of the SCA, ICC Chairs Office and NIRMS Secretariat.
- A Roundtable Report that will be available to NHRIs in order that they understand when, from whom and why they may receive communications relating to accreditation.

SETTING THE SCENE - RELEVANT PROVISIONS FROM THE ICC STATUTE

There are 12 references to the NIRMS Secretariat in the ICC Statute. Of these, 10 references are to be found in section 5 - Paris Principles Accreditation. This section is prefaced with reference to relevant Human Rights Council resolutions. Clearly a very distinct role is set out in the ICC Statute for the NIRMS Secretariat in relation to the accreditation process. This is reinforced by Article 6 which provides that meetings of the Subcommittee on Accreditation shall be held under the auspices of and in cooperation with OHCHR. The other reference to the Secretariat is in Article 46 which states that “.... the ICC Bureau is empowered to accept the services of NIRMS as the Secretariat for the ICC, the ICC Bureau and its Sub-Committee on Accreditation;......and in particular to work with NIRMS in connection with the accreditation process.

The specific references to the ICC Secretariat in relation to accreditation include:
- Applications for accreditation shall be submitted to the ICC Chairperson through the ICC Secretariat, Article 10
- A challenge to a recommendation can be submitted to the ICC Chairperson, through the ICC Secretariat, Article 12
- A Bureau member who disagrees with the recommendation shall notify the SCA Chair and the Secretariat and the Secretariat will promptly notify all ICC Bureau members. In turn ICC Bureau members shall notify the ICC Secretariat if they hold a similar objection - Article 12
- The ICC Secretariat has a specific role to play in relation to the process for immediate suspension of accreditation in exceptional circumstances, Article 18.3.
  - The ICC Chairperson, through the ICC Secretariat will notify the ICC Bureau and institution in question of the alleged existence of an exceptional circumstance;
  - any ICC Bureau member who disagrees with the recommendation to suspend the accreditation classification shall notify the ICC Secretariat;
  - the ICC Secretariat shall promptly notify all ICC Bureau members and provide all necessary information to clarify the objection;
  - ICC Bureau members who hold a similar view shall notify the ICC Secretariat;
  - The recommendation shall be referred to the next ICC Bureau meeting for decision.

Thereafter, in the SCA Rules of Procedure there are 10 references to the Secretariat. (see Annexure A)

1. LINES OF COMMUNICATION AND ROLE OF NIRMS IN RELATION TO ITS ACCREDITATION SECRETARIAT ROLE

“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. “ (SCA Rules of Procedure 2.4)

NIRMS, as the representative of OHCHR within the accreditation process, does not regard itself as an observer. NIRMS is of the view that the function of Secretariat is to provide both substantive and logistic assistance to the SCA before during and after sessions. Thereby ensuring that the accreditation process is conducted in a rigorous, fair and transparent manner. Their role is described as being akin to the Secretary of the UN Human Rights Council.

The following functions are performed by NIRMS in its capacity as Secretariat for the ICC:
- NIRMS, services the SCA meeting: solicits, receives and processes all applications for accreditation and re-accreditation. In the event that the ICC Chairperson receives an application, it is forwarded to NIRMS for processing.
- NIRMS analyzes the supporting documentation provided and prepares a summary and list of issues. These two documents are shared with relevant OHCHR desk officers and United Nations field presences for their comments.
- Civil society organisations are invited through the ICC website to submit reports to NIRMS on the practical functioning of the NHRI being reviewed.
- Prior to the SCA meeting, OHCHR uploads on the website, all materials submitted as well as a summary of the materials in relation to the requirements of the Paris Principles, and issues of concern for the consideration of the SCA. This information is accessible for download only to members of the SCA and observers.
- At the meeting of the SCA, NIRMS staff makes an oral presentation of the summary of the NHRI and the list of issues, OHCHR Desk Officers covering the respective country also provide a brief oral report on the human rights situation in the country. NIRMS staff coordinates telephone calls to the NHRIs to respond to questions from the SCA.
- The SCA then reviews and analyzes the information presented to determine the level of compliance of the applicant with the Paris Principles. Based on this, the Sub-Committee formulates a recommendation to the ICC.
- Where appropriate, NIRMS assists the SCA in determining the accreditation status to ensure that the process is fair, rigorous and transparent; resulting in decisions consistent with the Paris Principles and SCA best practices. In doing so, NIRMS draws the attention of the SCA to any implications of the accreditation status.
- NIRMS prepares the SCA draft report, which is adopted by the SCA at the last day of the session. NIRMS communicates this outcome to the concerned NHRIs and also receives challenges, if any.

In terms of lines of communication, the NIRMS Secretariat is in close contact with the SCA Chair, sharing information and advice.

2. LINES OF COMMUNICATION AND THE ROLE OF THE SCA

Members of the SCA communicate with each other, with NIRMS and with individual NHRIs on a variety of matters that can be both substantive and administrative in nature.

Official communications from the SCA emanate from either the SCA Chair or from NIRMS, depending upon the nature of the communication. In general, routine communications emanate from NIRMS, whereas matters of greater import or controversy emanate from the SCA Chair. This is determined on a case-by-case basis.

There are no agreed-upon lines of communication between SCA members. The SCA Chair and / or NIRMS share information with SCA members in regard to upcoming sessions and at other
times as needed. Communications that SCA members have with others – with their Regional Coordinating Committee or with individual NHRIs, for example – are generally not shared with other members of the SCA.

The SCA Chair and NIRMS communicate with each other on a more regular basis.

3. **LINES OF COMMUNICATION AND THE ROLE OF THE ICC CHAIR**

In relation to accreditation the ICC Chair receives communications from the ICC Secretariat, the SCA Chair and ICC members. Typical examples of this communication include:

- The ICC Chair receives the SCA Reports from NIRMS/Secretariat
- The ICC Chair is included in or receives direct communications from ICC members and ICC Bureau relating to challenges to SCA recommendations
- The ICC Chair receives direct communication from ICC members, NGOs and members of the public who are dissatisfied with the SCA process / wish to bring particular information to the attention of the ICC Chair
- The ICC Chair liaises with the SCA Chair in relation to the compilation of the ICC Progress Report and preparations for the ICC Bureau meetings and annual General Meetings.

It should be noted that in terms of the ICC Statute and SCA Rules of Procedures, the NIRMS Secretariat is specifically authorised to receive accreditation information and certain communications on behalf of the ICC Chairperson.

The role of the ICC Chair is to provide leadership in relation to the accreditation process and to represent the ICC Bureau in its interface with ICC members, the SCA and NIRMS Secretariat.

4. **THE ROLE OF OBSERVERS DURING THE ICC SESSIONS.**

There are a number of persons other than the SCA members and NIRMS Secretariat who are present during a sitting of the SCA. It is important to understand why they are present, and the extent to which they participate and add value to the proceedings.

The Accreditation Roundtable will discuss the role of participants in order that it is better defined and understood; thereby increasing the transparency and credibility of the accreditation process.

- **NIRMS fellows**
  NIRMS fellows form part of the OHCHR NIRMS team and thus there is no distinction between them and other members of NIRMS.

- **Regional Coordinators**
  Regional Coordinating Committee (RCC) representatives attend SCA meetings at the invitation of, and on such terms and conditions as may be determined by, the SCA.

The main role of RCC representatives is to monitor the proceedings. It is important to state that the role of RCC representatives is **NOT** to participate or advocate on behalf of applicants from their region or try to influence any decisions. Their role is to assist the SCA and to monitor the accreditation process in order to ensure that the standards are applied fairly and equitably to all applicants.

The attendance of RCCs is of benefit to the SCA, RCCs and ICC members in several ways. By attending SCA meetings RCCs:
become familiar with the accreditation process and are better able to assist their members to understand, prepare for and participate in the accreditation process.

- report to regional meetings on the practice and procedure of the SCA;
- become familiar with the way standards have been applied over time and are able to assist in promoting transparency and consistency;
- upon request or where relevant, can provide information specific to their region, which may assist the SCA in understanding certain regional peculiarities. For example, NHRRIs in the Americas follow the Defensoria/Ombudsman model while those in the Asia Pacific region follow the Commission model. The latter region also has a significant number of NHRRIs in states that follow the Westminster system of government;
- can provide information regarding the practical functioning of NHRI members in the region that are being reviewed (this information is not necessarily reported back to the NHRI under review);
- are able to vouch for an applicant’s regional and international participation, since these are areas where the two organisations may interact and cooperate;
- can facilitate or follow up on information required by the SCA where other communications have proved unsuccessful.

It should be noted that some Regional Coordinating Committee representatives also attend as an assistant to their region’s SCA member. In that capacity, their role is directed by the SCA member.

The SCA Rules of Procedure do not clarify the role of RCCs, nor do they specify what is and is not permissible. There is no formal process refraining RCC’s to ensure the confidentiality of the proceedings. *This could possibly be addressed in the SCA rules of procedure.*

### ICC staff

Since the establishment of the position of the ICC Geneva Representative in 2007, the SCA regularly invites the Geneva Representative to attend as observer during SCA meetings. Attendance at meetings is dependent on capacity at the given time.

The ICC Geneva Representative provides a liaison between the work of the SCA and the ICC Chair and broader developments within the ICC. For example, where requested by the ICC Chair or SCA the ICC Geneva Representative reports to the SCA on relevant ICC Bureau meeting decisions or on relevant developments within UN mechanisms.

The Geneva Representative does not participate in the substantive decision-making of the SCA.

At the request of the SCA, the Geneva Representative provides oral information or may clarify information which has been provided to the SCA, primarily focusing on NHRRIs engagement at an international level.

The Geneva Representative assists the SCA where required in the drafting of the SCA report and participates in discussions on policy development (e.g. Updating the SCA on pertinent developments within UN human rights mechanisms).

Whilst there is no formal processes set in place in terms of divulging confidential information, ICC employment contracts contain a confidentiality clause. New staff and interns are specifically inducted on the importance of confidentiality. Current and former ICC Chairs have occasionally requested the ICC Geneva Rep to provide internal reports on what happens within the SCA.
Communications to ICC membership and the public on the final outcome Bureau decision requires further attention during the Roundtable. At present, there is no process in place to confirm with external stakeholders once the decision of the Bureau is final what has been the Bureau’s decision and when it became final. At times, this has created uncertainty. In order to address this, the SCA report could be amended to include a cover page, which confirms the content/nature of decisions and the date when it became final.

There are currently no official safeguards in place to ensure the confidentiality of the information discussed during SCA proceedings. Rather, this confidentiality is based on the personal undertaking of the individuals present.
SESSION 4: OTHER MATTERS RELATED TO ACCREDITATION

SESSION 4 - NHRIS UNDER THREAT
1) Introduction
NHRIs in a number of countries face significant challenges and are exposed to attacks and threats, as well as intimidation, harassment, arrest and detention in connection with their human rights activities. NHRIs may also face difficult and challenging circumstances such as natural disasters and it could be considered whether these circumstances fall within the category of NHRIs under threat. Under the ICC Statute one of the functions of the ICC is to assist NHRIs under threat.

At its 16th Session held on 14 April 2005 in Geneva, Switzerland, the ICC adopted guidelines relating to early warning mechanisms for national human rights institutions which sets out the proposed steps which a NHRI and the ICC may wish to take when a NHRI is under threat.

In order to facilitate the discussion this note sets out the background and invites discussion on two distinct issues:
   The relationship between threats and accreditation status
   The need for updated guidance both in respect to accreditation and generally

These issues reflect the functions of the ICC to support NHRIs under threat, but also to protect the legitimacy of the accreditation process and the Paris Principles.

2) Background
The ICC Statute was amended following the Guidelines to include the function of providing assistance to NHRIs under threat. This was in recognition of a growing number of threats to NHRIs as a consequence of the growing number of NHRIs and their increasing effectiveness in holding States to account.

Concerns raised by Special Rapporteurs on the situation of human rights defenders
In 2013 the former Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, focused her report on the role of NHRIs. The Special Rapporteur recognised that national institutions which operate in compliance with the Paris Principles, and their members and staff, could be considered as human rights defenders, as they strive to promote and protect human rights. She raised concerns that in a number of countries, they face significant challenges and are exposed to attacks and threats, as well as intimidation, harassment, arrest and detention in connection with their human rights activities. On a number of occasions, the Special Rapporteur, her predecessor, and her successor Michel Forst have expressed concerns about the challenges faced by members and staff of NHRIs both through communications sent to Governments and in recommendations issued after country visits. The Special Rapporteur concluded that such considerable challenges and constraints, could seriously undermine their independence, efficiency and legitimacy.

Types of threats
Threats may include, but are not limited to:

- Violence against member or staff of NHRIs.
- Intimidation and/or threats of death or violence against members or staff (or their families).
- Calls for abolition of the NHRI.
- Removal or attempted removal of members of the NHRI.
- The appointment of members of NHRIs who are not independent.
- Impediments placed on the institution concerning required support to ensure their very existence and the effective functioning of their mandates including;
- Restriction of mandate.
- Reduction of budget
- Restrictions on staffing or interference with recruitment/terms and conditions
- Creation of additional/competing institutions which are more government oriented

The reasons behind such threats may relate to certain actions which the NHRI has undertaken, e.g. criticising governmental authorities or civil servants; issuing reports and or statements (in annual or extraordinary reports to international human rights treaty bodies, special mechanisms of the United Nations, the media, etc.); or disgruntled complainants who feel that their requests for remedies have not been satisfied.

Role of the ICC

The ICC acts in a number of ways to support NHRIIs under threat or in challenging situations, this can include: issuing statements; engaging key UN stakeholders such as the High Commissioner, the President of the Human Rights Council and Special Procedure Mandate Holders; along with media engagement and awareness raising to ensure that all relevant bodies within the UN become seized of the matter.

The Regional Chairs, Networks and Coordinators also play a key role in raising awareness amongst regional bodies, and providing direct support to NHRIIs under threat or in challenging situations.

3) Guidelines

The 2005 Guidelines relating to NHRIIs under threat are attached to this note. The roundtable is invited to consider whether the guidelines should be revised.

Issues that the roundtable may wish to consider include:

Should the guidelines begin with Guiding Principles such as:

1. Do no harm
2. Everything should be done in consultation with the person under threat.
3. Information received needs to be verified
4. The appropriate course of action will depend on the nature of the threat, the context of the NHRI at the national level, and be aimed at achieving the most effective remedy
5. Coordination between the individual concerned, the domestic NHRI, the regional network and the ICC in terms of actions taken
6. All stakeholders should strategise in terms of nature and timing of their interventions
7. Interventions should be considered both during and after the threat

Are the respective roles of key stakeholders properly reflected in the current guidelines?

1. The ICC (Chair, Bureau, membership)
2. The Regional Networks
3. The NHRI
4. NIRMS/OHCHR
5. Other UN bodies
6. Other stakeholders

Is the range of actions set out in the guidelines sufficient?

1. The ICC issuing a statement concerning facts regarding the threat and the proposed action
2. The ICC Chair and OHCHR writing or making contact with the requisite authority concerning the threat
3. ICC Chair requesting the intervention of other NHRIs
4. OHCHR, if appropriate, making contact with the Governmental authorities
5. Requesting the intervention of the relevant United Nations or regional mechanisms
6. Informing relevant stakeholders including NGOs
7. Engaging with the national and international media

4) The relationship between threats and accreditation status
The ICC has an obligation to support NHRIs under threat, but also to protect the integrity of the accreditation process. Threats to NHRIs are most likely to arise when an NHRI is effectively fulfilling its mandate by holding government to account. However, the effect of threats may be such that they bring into question a NHRI’s compliance with the Paris Principles.

The ICC needs to ensure that it has provided all assistance possible to the NHRI, but ultimately it is the responsibility of the state to set up and maintain the NHRI in a way that complies with the Paris Principles and ensures the NHRI can independently and effectively fulfill its mandate.

Where threats to an NHRI are affecting its compliance with the Paris Principles, and all possible assistance has been given, there may be circumstances where the accreditation of the NHRI will need to reviewed. This should not be seen as an additional attack on the NHRI or its credibility, rather as a way to ensure the legitimacy of the accreditation process, and to bring additional attention to the actions of those threatening the NHRI or the lack of action by the state to protect the NHRI from threats.

Article 16.1 of the ICC Statute provide for a review of accreditation status where the circumstances of any NHRI change in any way which may affect its compliance with the Paris Principles. Article 18.3 of the ICC Statute provides for immediate suspension of accreditation in exceptional circumstances.

The ICC General Observations provide guidance on the essential requirements of the Paris Principles, and practices that directly promote Paris Principles compliance. This includes adequacy of funding, guarantee of functional immunity, and independence.

The Roundtable may wish to consider:
1. How the ICC can support NHRIs under threat while still maintaining the integrity of the accreditation system?
2. Is there sufficient clarity as to what circumstances will trigger a review of accreditation?
3. Should the guidelines on NHRIs refer to the potential for review of accreditation?
NATIONAL INSTITUTIONS IN NEED: GUIDELINES FOR EARLY WARNING

Purpose: The International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) at its 14th session in April 2004 decided to consider a paper relating to Early Warning mechanisms for national human rights institutions (NIs). It requested the Secretariat to prepare a draft paper for discussion at its 15th session to be held in Seoul, Republic of Korea in September 2004. The purpose of this note is therefore to meet with that request and provide general guidelines for NIs to follow when they or their members or staff are under threat.

Background: A number of NIs and/or their members and staff have recently been the subjects of threats. These threats, which may be more or less direct in nature, can for instance take the following forms

- Calls for abolition of the institution;
- Impediments placed on the institution concerning required support to ensure their very existence and the effective functioning of their mandates including:
  - Financial
  - Restriction of mandate
- Creation of additional/competing institutions which are more government oriented
- Intimidation and/or threats of death or violence against members or staff of the institution

The reasons behind such threats may relate to certain actions which the NI has undertaken, e.g. criticising Governmental authorities or civil servants; issuing reports and or statements (in annual or extraordinary reports, to international human rights treaty bodies, special mechanisms of the United Nations, the media, etc.); or disgruntled complainants who feel that their requests for remedies have not been satisfied.

The ICC, while not explicitly noted within its mandate as being empowered to take action in support of its members when under threat, is implicitly empowered to do so by virtue of its mandate to strengthen NIs and to ensure that they conform to the Paris Principles; to co-ordinate joint activities and co-operation among NIs; and to liaise with the United Nations and other international organisations. It is therefore appropriate that the ICC provide some general guidelines for NIs to refer to in a Call for Action in support of their institution.

Questions which the ICC will need to consider when such action is requested include:

- Is there sufficient evidence to justify a particular course of action?
- Is the institution in question actually an NI?
- What is the most appropriate course of action?
- Through which medium is the action going to be most effective?

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7 Adopted by the members of the International Coordinating Committee of National Human Rights Institutions at its 16th session, held on 14 April 2005, Geneva, Switzerland.
Guidelines
The following are the proposed steps which a NI and the ICC may wish to take when a NI is under threat. Such action should be undertaken in consultation with the NI whether the threat is against the institution or a member or staff:

- Contact the Chair of the ICC, the Regional Coordinator and/or Secretariat, and the Office of the High Commissioner for Human Rights (OHCHR) explaining the facts and necessary details behind a particular initiative;

- In consultation with these bodies identify an appropriate course of action, depending on the nature of the threat and the context of the NI at the national level etc., aimed at achieving the most effective remedy.

This could include such steps as:

- Posting on the NI website (www.nhri.net) information concerning facts regarding the threat and the proposed action;

- Requesting the ICC Chair and OHCHR to write or make contact with the requisite authority concerning the alleged threat;
  - ICC Chair can request the intervention of other NIs and in particular ICC Members
  - OHCHR, can if appropriate, make contact with the Governmental authorities

Depending on the nature of the threat the process can be incremental. If resolved through direct contact with the authorities then the process can stop. If not then additional pressure may be required, i.e.:

Engaging with the national and international media;

- Requesting the intervention of the relevant United Nations or regional special mechanisms, in particular for example the United Nations Special Rapporteur on Human Rights Defenders, the African Rapporteur on Human Rights Defenders, the European Human Rights Commissioner, etc;

- Drawing the issue to the attention of the United Nations treaty bodies;

- Drawing the attention to the key International and Regional NGOs;

- Drawing attention to the issue of concern in the Commission on Human Rights under agenda item 18(b)
SESSION 4: STATEMENTS GIVING RISE TO CRITICISM OR A POINT OF ORDER

Introduction
At its meeting in Johannesburg on 16 and 17 October 2014, the ICC Bureau received a report on, and discussed the matter of statements from NHRIs at an international level that give rise to criticism or that may raise a point of order at the UN Human Rights Council (Council).

The ICC Bureau requested the ICC Chairperson to develop an internal protocol on how to deal with such situations, for consideration at its next meeting in March 2015.

In the preparatory process of the ICC accreditation roundtable and in consultation with ICC members, it was further decided that the matter be considered during the ICC accreditation roundtable meeting.

In order to facilitate this discussion, the present note sets out i) background; ii) current practice; and offers iii) elements for the development of an ICC internal protocol.

Background
The ICC works to assist its members to help ensure their most effective engagement with UN human rights bodies, in line with their mandates as NHRIs and the respective bodies’ rules of procedures and practices.

This includes alerting ICC members to, and advising on, a situation where the format, tone or content of an oral or written statement intended to be submitted to an international body may give rise to criticism or be subject to a point of order at the Council.

Though relatively rare, such situations have occurred in the past, particularly at the Council. Whilst relevant practice has been developed within the ICC, the ICC is yet to confirm internal processes on how most effectively deal with such situation. In doing so, the following areas may require particular consideration:

i) What is the role of various actors that may be involved, eg. NHRI concerned, ICC Chairperson, Regional Chair and Coordinators, ICC Geneva Representative, NIRMS and the Council/other international body’s Secretariat;
ii) What should be the lines of communications between these actors, if any?
iii) What is the role of the ICC subcommittee accreditation?

Current practice
Over the years, the following practice has developed:

NHRIs that engage with international bodies are required by the working methods of these bodies to submit in advance a copy of a statement they intend to present as oral or written statement.

The ICC Geneva Representative is regularly informed about the NHRI's intent to submit a statement, either by the secretariat of the international body, or, in most cases, by the NHRI itself.

In the event that the statement, in light of its format, tone or content appears not to meet the international body's rules of procedures or working methods, the ICC Geneva Representative raises this concern with the NHRI and requests for an opportunity to discuss the matter. This may be through a face-to-face meeting if the NHRI is present in Geneva.
The objective of the discussion is to advise the NHRI about the rules of procedures and working methods of the international body and to assist in securing that the statement meets these requirements. This helps to ensure the NHRI’s most effective participation in that body’s proceedings.

Meantime OHCHR NIRMS and the OHCHR secretariat of the relevant body are informed and consulted to provide advice in their respective capacities as ICC secretariat and as secretariat of the international body.

The ICC Chairperson, Regional Chair and coordinator from the concerned NHRIs’ region is regularly informed and consulted, either through the ICC Geneva Representative or the NHRI itself.

In some instances, the matter of a NHRI statement that was delivered yet not in conformity with the body’s rules and practices or which was subject to a point of order has been brought to the attention of the ICC Sub Committee on Accreditation.

An important factor during the above outlined process is that of time. In some instances, due to international bodies’ practices only a limited amount of time may be available between the moment where the statement may come to the attention of the ICC and the moment where the statement is scheduled for delivery or submission before that body. This is accentuated when different time zones are involved.

**Elements for an internal protocol**

Based on the current practice and related experiences, the following elements for an internal protocol are suggested:

1. Where possible and not already required by international bodies’ rules and practices, NHRIs wishing to submit a statement to an international body are encouraged to share in advance a copy of that statement with the body’s secretariat and ICC;

2. Where a concern is raised that the proposed statement may give rise to criticism, the NHRI is encouraged to seek and consider advice from the ICC, OHCHR NIRMS and the international body’s secretariat;

3. To this end, the ICC Geneva Representative and/or OHCHR NIRMS informs the ICC Chairperson, ICC Regional Chair and coordinator of any statements which may give rise to concerns. The ICC Regional Chairs and coordinators are requested to advise and engage with the NHRI on the matter, where possible taking into account time constraints. The ICC Chairperson may also be invited to advise and engage on the matter; and

4. In line with article 16.2 of the ICC statute, the ICC Chairperson may decide to inform the ICC Sub Committee on Accreditation of the matter, for its further consideration.
SESSION 4: ENGAGEMENT BY OTHER INDEPENDENT NATIONAL BODIES AT AN INTERNATIONAL LEVEL

Introduction
At its meeting on 16 and 17 October 2014 in Johannesburg, the ICC Bureau received a report on, and discussed the matter of, other national bodies that are not the Paris Principles-compliant (A status accredited) national human rights institution (NHRI), engaging with international human rights mechanisms.

The ICC Bureau decided to defer this matter for consideration at the ICC roundtable for accreditation in March 2015.

In order to facilitate the discussion the present note sets out i) background; ii) issues for consideration; and iii) offers two proposals for the way forward.

Background
The ICC and international human rights mechanisms have had experiences of other national bodies that are not the Paris Principles-compliant (A status accredited) national human rights institution (NHRI), wishing to participate at international human rights mechanisms.

Based on this experience, “other national bodies” relates in particular to ombudspersons, mediators and national institutions with a thematic or local mandate, including National Protection Mechanisms, under OPCAT, and Independent Monitoring Mechanisms, under Article 33(2) UNCRPD, that do not meet and do not intend to meet the Paris Principles requirements and ICC accreditation.

“International human rights mechanisms” includes the United Nations Human Rights Council (Council) and its mechanisms, and the United Nations treaty monitoring bodies (treaty bodies).

International human rights mechanisms do not provide for rules or provisions that regulate the engagement of other national bodies that are neither ICC accredited nor fall under the other recognised categories of “UN member States” and “ECOSOC-accredited NGOs”.

There is however an emerging trend at the Council and treaty bodies to consider, and at times recognize, the status and contributions of such other national bodies.

The Council's practice is to grant Paris Principles compliant NHRI participation rights in its proceedings. The Council currently relies on the ICC accreditation system to determine which NHRI is Paris Principles-compliant (A status).

Other national bodies have so far requested but not (yet) been granted participation in the Council's proceedings in their own right/as NHRI. Nevertheless, such institutions have occasionally been invited to contribute as panelists on the Council's thematic panel discussions.8

UN treaty bodies have given recognition and status to Paris Principles compliant NHRI. This is reflected in treaty bodies' rules of procedures, working methods and practices, albeit in a way that varies from each treaty body to the other. On the other hand, treaty bodies have developed the practice of granting other national bodies opportunities to contribute to the treaty bodies' work, including by submitting written contributions and providing oral briefings to the Committees.9

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8 See for example most recently: Participation of the Ombudsperson on Children in the Council's panel on Child Rights at its 25th session in March 2014; and participation of the Ombudsperson on Children of the Russian Federation in the Council's panel on Child Rights at its 27th session in September 2014.

9 See for example: The Committee on the Rights of the Child has continuously engaged with Ombudspersons on Child Rights; the Committee on Enforced Disappearances, in its position paper on NHRI adopted at its session in October
Participation of other national bodies has been granted on the basis of these institutions' status, mandate and expertise.

Whilst the matter of other national bodies’ engagement at an international level has been identified and discussed in previous ICC meetings\(^{10}\), the ICC has not yet developed a formal position on the matter.

On the other hand, the Paris Principles explicitly require of NHRI to “maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular ombudsmen, mediators and similar institutions)”. This provision has informed the development of the Sub Committee on Accreditation's General Observation 1.5 entitled “Cooperation with other bodies” which provides further guidance on the interpretation of this Paris Principles' requirement.

**Issues for consideration**

The following inter-related issues arise in relation to the above:

i) Recognition/status of other independent bodies at an international level; and

ii) Cooperation between NHRIs and other independent bodies.

**Recognition/status of other national bodies at an international level**

Depending on their mandates and status, other national bodies may provide the international human rights mechanisms with valuable advice on the national and local human rights situation.

Yet whilst it remains in the discretion of international human rights mechanisms to give status and recognition to such other national bodies, there is a need to ensure that any status provided to other national bodies remains distinct from the status of accredited NHRI at an international level.

The status of NHRIs is unique in light of i) NHRIs' broad human rights mandate and ii) their international accreditation system to ensure independence, accountability and impartiality. This status is distinct yet complementary to that of other national bodies.

As such, other national bodies should not be accredited, seated, speaking nor submitting written documentation with international human rights mechanisms as NHRIs.

As a global association of NHRIs, there is an important role for the ICC in ensuring that NHRIs' unique status with international human rights mechanisms is preserved and distinguished from that of other national bodies. This would be supported by the development of an ICC policy, to i) assist NHRIs as they engage on an international level, and ii) to engage in a coordinated and informed strategy with international human rights mechanisms and other stakeholders, such as OHCHR, IOI and member states.

- **Proposal 1**

That the ICC develop and implement in consultation with its members and relevant other stakeholders a policy to the effect that:

- Other national bodies depending on their status and mandates may provide the international human rights mechanisms with valuable advice on the national and local

\(^{10}\) See for example: ICC Bureau meeting, Rabat, 2009; ICC Strategic Plan 2010 to 2013; ICC Bureau meeting Seoul, 2011.
human rights situation;
− Whilst it remains in the discretion of international human rights mechanisms to give status and recognition to such other bodies, such status must remain distinct from the status of NHRIs;
− As such, other national bodies should not be accredited, seated, speaking nor submitting written documentation with international human rights mechanisms as NHRIs; and
− In the implementation of this policy, the ICC will be engaging with international human rights mechanisms and other stakeholders, including OHCHR, national bodies’ associations such as the IOI, member states and civil society.

Cooperation between NHRIs and other national bodies

The Paris Principles require that NHRIs “maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular ombudsmen, mediators and similar institutions”).

This provision has informed the development of the Sub Committee on Accreditation's (SCA) General Observation 1.5 entitled “Cooperation with other bodies” which provides further guidance on the interpretation of this Paris Principles' requirement.

In its General Observation 1.5, the SCA notes that “Regular and constructive engagement with all relevant stakeholders is essential for NHRIs to effectively fulfil their mandates. NHRIs should develop, formalize and maintain working relationships, as appropriate, with other domestic institutions established for the promotion and protection of human rights, including sub-national statutory human rights institutions, thematic institutions, as well as civil society and non-governmental organizations”.

As stressed by the SCA,
− The effectiveness of a NHRI in implementing its mandate to protect and promote human rights is largely dependent upon the quality of its working relationships with other national bodies;
− The character and identity of a NHRI serves to distinguish it from both government bodies and civil society. As independent, pluralistic institutions, NHRIs can play an important role;
− Cooperation with a variety of bodies and civil society will also assist in developing accessibility;
− As a result of their specialized mandates, other human rights bodies and civil society groups may provide a NHRI with valuable advice on the major human rights issues facing vulnerable groups across the nation; and
− The importance of formalizing clear and workable relationships with other human rights bodies and civil society, such as through public memoranda of understanding, serves as a reflection of the importance of ensuring regular, constructive working relationships and is key to increasing the transparency of the NHRI’s work with these bodies.

Whilst some experience has been developing in relation to NHRIs' cooperation with national bodies, many NHRIs are still identifying and building capacities on how to best engage and cooperation with other national bodies.

The ICC and regional networks have in the past addressed cooperation between NHRIs and other national bodies, including at ICC General Meetings, ICC Bureau meetings, and in consultation with OHCHR.
NHRIs could be further assisted by the compilation of experiences and best practices in NHRI cooperation with other national bodies from all regions, both at national level and when engaging at an international level, and the development of practical guidance to ICC members on cooperation with national bodies.

This will support NHRIs to build capacity on their roles in cooperating effectively with other national bodies, with a view to implementing the Paris Principles, and ultimately strengthening human rights on the ground.

• **Proposal 2**

That the ICC in consultation with its members and other stakeholders develop a guidance note for NHRIs' engagement with other such bodies which

- Identifies experiences and best practices in relation to NHRI cooperation with other national bodies at both national level and when engaging at an international level;
- Offers practical guidance for NHRIs in relation to cooperation with other national bodies, on the basis of the Paris Principles and General Observation 1.5;
- Underlines the importance of NHRIs' cooperation with other national bodies, when appropriate, to ensure that comprehensive information is provided to international human rights mechanisms through NHRI speaking rights; and
- Outlines the role of the ICC in engaging with other stakeholders, including OHCHR, national bodies' associations such as the IOI, member states and civil society, to assist members implementation of the guidance.
SESSION 4: SUB-COMMITTEE ON ACCREDITATION – RESOURCES

1. Introduction

On the occasion of the Accreditation Roundtable, participants will have the opportunity to discuss how the Sub-Committee on Accreditation (‘SCA’) is resourced; whether this is sufficient and sustainable; and options for future support. In order to facilitate this discussion, the current resources of the SCA and consideration for its future are set out.

2. Current Support for and Resources of SCA

2.1 ICC Support

- Geneva Representative’s attendance and advice at SCA meetings, capacity allowing.
- ICC (prospective) members prepare Statement of Compliance (‘SoC’) and supporting documents for accreditation review process.

2.2 ICC - SCA Members’ Support

- Analyze SoC, supporting documents and Secretariat summary for NHRIIs under review.
- Attendance and decision making at SCA sessions (two weeks per year, travel and DSA in Geneva amounts to approx. 30,000 CHF in total, self-paid, as well as members’ time).
- Drafting of SCA reports for recommendation to ICC Bureau.
- Drafting or revisions to the General Observations, SCA Rules of Procedure and other documents as required by the ICC Bureau.
- Canadian NHRI also prepares grids capturing information from SoCs and supporting documents for its own use, which are shared with SCA members, NIRMS, regional coordinators and ICC Geneva Representative (four months FTE senior staff member).
- Assistance and information related to the SCA to ICC members, upon request.
- Update to the ICC Bureau by SCA Chair twice per year, in person or via email / Skype.
- Presentations and speaking engagements on the accreditation process to ICC meetings, regional meetings and others upon request.

2.3 OHCHR - NIRMS Secretariat Support

- Preparation of calendar of accreditations to take place, maintenance of SCA website and updating NHRI accreditation chart.
- All communications with SCA members, NHRIIs under review, NGOs and others.
- Advice and support for SCA members and NHRIIs under review.
- Drafting summaries for each NHRI under review, based on SoC and supporting documents, including founding legislation and annual reports.
- Meeting logistics, including preparation, coordination, and provision of meeting room, printing and phone access for SCA sessions.
- Oral presentation of the summary of each NHRI under review at SCA sessions, and arranging oral input by relevant OHCHR desk or country officers.
- First draft of SCA reports, and input to revision of General Observations.
- When necessary, translation and interpretation, often provided by NIRMS staff and NHRI Fellows (translation to all ICC languages would be approx. 100,000 CHF per year, and translation of documents would be approx. 40,000 CHF per year).

2.4 Regional Coordinators’ Support (capacity allowing)

- Assist members to prepare for accreditation review.

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• Analyse SoC, supporting documents, and Secretariat summary for all NHRIs under review, as well as Canadian NHRI grids.
• Attendance at SCA sessions (two weeks per year, travel and DSA self-paid, approx. 30,000 CHF in total if all regional coordinators attend all sessions, as well as staff time).
• Advice and support for SCA members and NHRIs under review in one’s own region.
• Assist members to implement SCA recommendations post accreditation review.
• In addition, and as a member of the SCA Drafting Group, the APF assists in drafting SCA reports, new General Observations and SCA Rules of Procedure as and when required (and ENNHRI assists in drafting SCA reports, when capacity).

3. **Considerations for Future Support for SCA**

The following considerations are noted for the sustainability of the SCA:
• It is expected that the workload for SCA will increase as more NHRIs are established.
• ICC, NIRMS, SCA members and Regional Coordinators all have limited capacity, and many are facing funding restrictions.
• The EU grant to ICC, being a project grant and not an operating grant, may not be able to support ‘core’ ICC activities such as the running of the SCA. The Danish Institute is currently investigating this issue.
• Alternative funding sources or in-kind support must be considered, as SCA and the accreditation process is central to the legitimacy of the NHRI system.
• Use of technology to minimise costs should also be considered (for example, Skype).