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# **NATIONAL HUMAN RIGHTS INSTITUTIONS AND THE ACCREDITATION PROCESS**

## **Introduction**

 National Institution for the Promotion and Protection of Human Rights is usually described as an independent State-funded agency established by the constitution or national law with the mandate to promote and protect human rights at the national level. National Institutions have an increasingly important role at the international level too, through contributions to substantive human rights discussions and oversight processes.

A National Human Rights Institution is considered an important mechanism through which a State responds to its duties “to take all appropriate action” in ensuring that recognized international human rights are implemented at the national level. The creation of a National Institution is also understood as a signal that a country takes its human rights obligations seriously. The strength of this commitment is measured by the degree to which the National Human Rights Institution is truly independent and has the powers and

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resources required for its effective functioning.

The measurement is made against international standards that place independence and effectiveness as minimum core requirement ensuring that a National Human Rights Institution is considered credible at both national and international levels. This paper describes the main requirements set by the international standards, discusses international assessment of compliance and looks at the status of the Country's National Human Rights Institutions.

### **The International Standards – the Paris Principles**

The international standards relating to National Institutions were adopted by National Human Rights Institutions in conclusion of their first International Workshop held in Paris in October 1991 following a request from the United Nations Commission on Human Rights to organize a gathering of national and regional institutions involved in the promotion and protection of human rights. The United Nations General Assembly endorsed these conclusions in 1993. They became known as “the Principles relating to the status of national institutions” or “the Paris Principles”.

The Paris Principles have set independence and effectiveness as core benchmarks for a national Institution to be considered credible at both national and international levels. They require six minimum conditions to be met: independence guaranteed by statute or constitution; autonomy from government; pluralism, including in membership; a broad mandate for promotion and protection based on universal human rights standards, including adequate powers of investigation; adequate resources; and cooperation with national and international actors. These conditions are inter-related and have to be met as a whole.

The Paris Principles outline the mandate and competencies of a National Human Rights Institution, the composition and the legal, operational and financial autonomy. A National Institution should have a wide mandate to both promote and protect human rights through advisory, oversight and educational functions. A National Institution submits recommendations and proposals to government, parliament or other competent authority on any legislative or administrative provision relating to the protection of human rights, on any human rights violation or the State's interaction with international human rights bodies. National Human Rights Institutions promote conformity of national laws and practices with international human rights standards, encourage ratification of international human rights norms and ensure their implementation. They advice and contribute to public awareness through information and education. Some also have quasi-

jurisdictional competence to consider individual complaints.

The composition of a National Human Rights Institution should ensure independence from any state authority or power, particularly as concerns decision making. The Paris Principles require the members of the National Human Rights Institution to be appointed through broad consultation in a transparent and competitive procedure. Its composition should “mirror” the society and ensure pluralist representation of social forces involved in human rights promotion and protection, such as non-governmental organizations, trade unions, professional organizations, trends in philosophical or religious thought, or academia. National Human Rights Institutions should have full-time members and be able to employ own professional staff. Finally, the Paris Principles require National Human Rights Institutions to receive adequate State funding, allocated and spent without interference by the government.

### **The International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights**

The National Human Rights Institutions have established the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) in 1993, at their International Conference in Tunis. ICC is an international, independent network of Paris Principle-compliant National Human Rights Institutions which has the purpose “to promote and strengthen National Human Rights Institutions to be in accordance with the Paris Principles” and provide “leadership in the promotion and protection of human rights”. As at December 2011, the network included 99 National Human Rights Institutions – 69 accredited “A” status, 20 accredited “B” status, and 10 accredited “C” status. .

ICC ensures interaction and cooperation with the United Nations, among members and with other regional and national actors. ICC organizes conferences, implements initiatives and works on knowledge development, issues guidelines, policies, encourages education and training opportunities for the National Human Rights Institutions. It promotes the establishment and strengthening of National Human Rights Institutions at national level, including through assessment of conformity with the Paris Principles of those National Human Rights Institutions wishing to join as ICC members and support compliant National Institutions if they find themselves under threat.

As of 2008, ICC incorporated itself as a legal entity under Swiss law, with a managing Bureau of 16 voting members, four each representing the four geographic National Human Rights Institution groupings of Africa, the Americas, Asia-Pacific and Europe. ICC has its Statute and governing

bodies, working groups on governance and sustainable funding and also includes a Sub-Committee on Accreditation (SCA).

The Sub-Committee is an ICC body mandated to review and analyze accreditation applications and make recommendations to the Bureau on the compliance of applicants with the Paris Principles. It is composed of one compliant National Human Rights Institution appointed each by the four regional ICC groupings. The Sub-Committee has its own rules of procedures and working methods. To advance the principles of rigor, transparency and fairness in the accreditation process, the Sub-Committee develops guidelines for the accreditation and issues general observations clarifying the understanding and application of the Paris Principles in the practice. The Sub-Committee meets twice a year at the Office of the United Nations High Commissioner for Human Rights in Geneva, which is also a permanent observer of the ICC and SCA and serves as its Secretariat.

ICC's work demonstrates that independence and effectiveness go far beyond a mere standard used for the international accreditation of National Institutions. Independence and effectiveness permeate all aspects of National Institutions. One should appreciate that it was the National Institutions themselves that have adopted the Paris Principles and established the accreditation system. United Nations just endorsed the Paris Principles as an international standard. United Nations continue to support the work of the National Institutions and ICC, recognizing their invaluable contribution as important actors in the promotion and implementation of international human rights standards.

### **The ICC accreditation process**

The accreditation provides a National Institution with official recognition of the level at which it complies with the Paris Principles. There are currently three such classifications, known as "status": A – compliance with the Paris Principles; B - not fully in compliance with the Paris Principles or insufficient information provided to make a determination; and C – non-compliance with the Paris Principles.

A compliant "A" status recognizes the National Institution as legitimate and credible and confers it international acceptance. The National Institution becomes an ICC member with a voting right and right to participate in the ICC work and decision making. The Institution also gets an open door to participate in the work of the international human rights bodies, including the United Nations Human Rights Council.

An important benefit for the National Institution is that they may

receive ICC assistance if it comes under threat resulting from a change of circumstances that may affect its independence or effectiveness. Such circumstances may for example involve financial cuts, restrictions on the mandates, intimidation or threats against members or staff, intended change of the enabling legislation, decrease of transparency of the appointment or dismissal of key National Human Rights Institution officials.

The not-fully compliant “B” National Institution may participate as non-voting member in the international and regional meetings of National Human Rights Institutions. The incompliant “C” Institution has no privileges with ICC or the United Nations human rights forums, unless invited to do so by the Chairperson of the meeting or workshop. The failure to be accredited indicates that a National Human Rights Institution is not independent or effective and thus not credible.

An immediate benefit from the accreditation is that the National Institutions receive recommendations on issues to be addressed to maintain or reach compliance with the Paris Principles. These recommendations provide solid basis for the Institution’s engagement with the national authorities, especially as it concerns its strengthening, alignment with the Paris Principles and eventual re-applying for accreditation which the National Institution may request any time it considers had reached a point of compliance.

It is important to stress that the ICC status is not granted once for all. To ensure that National Institutions maintain and improve their compliance, all “A” and “B” National Institutions are subject to re-accreditation every five years after the initial accreditation. They may have their status downgraded if they fail to demonstrate ongoing compliance.

Accredited “A” Institutions have also to report any change of circumstances that may affect their compliance. Such a change may result in a review of compliance. Likewise, 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 National Institution that has been accredited with an ‘A’ status may have changed in a way which affects its compliance with the Paris Principles, the Chairperson or the Sub-Committee may initiate a review of that NHRI’s accreditation status.

According to recent amendments to the ICC Statute, the accreditation of an “A” status National Institution may be suspended, in case that an exceptional circumstance exists necessitating the urgent suspension, the ICC Bureau may decide to immediately suspend the accreditation classification of that institution and initiate a special review. In addition, an “A” Institution accreditation may be suspended if the Institution withdraws the re-accreditation application without justification or fails to seek re-accreditation.

### **The accreditation process**

The accreditation is a process in which SCA reviews the application for the ICC membership, assesses the level of National Institution's compliance with the Paris Principles and makes recommendations to the ICC Bureau which then decides on the status and communicates its decision and eventual recommendations to the National Institution.

The National Institution avails itself of the accreditation voluntarily, through application supported by founding legislation, outline of organizational structure, staff and annual budget, the latest published annual report and a detailed statement showing how it complies with the Paris Principles. To ease the application, SCA has developed some guidelines for accreditation and re-accreditation of National Human Rights Institutions and a template for the statement of compliance, providing detailed guidance on main issues of concern.

According to the ICC rules, only one National Human Rights Institution per country may be accredited with voting right. If there is more than one National Institution, they are recommended to agree jointly and formally among themselves which would represent the country's National Institutions with the ICC.

The accreditation process is interactive and increasingly rigorous. While the application documentation creates the basis for the assessment, ICC and the Sub-Committee also seek input on the merit of the application from United Nations, civil society and other stakeholders in the country. The applying National Institution is informed on any such input and may also be invited to exchange additional information throughout the process so to be able to demonstrate how it exercises its independence and how effective it is in the practice. The Sub-Committee makes the assessment in its session from which it issues a report with a recommendation for the ICC Bureau which takes the final decision on the accreditation status.

As noted earlier, the accreditation is not granted once for. All compliant National Institutions are subject to periodic re-accreditation and their status may be reviewed in case of change of circumstances affecting their independence or effectiveness.

### **The National Human Rights Institutions of the Country**

The country currently has two National Human Rights Institutions – the Office of the Ombudsman and the Commission for Protection from Discrimination. One of the Institutions, the Ombudsman, has applied for

accreditation with the ICC in December 2010 and was accredited “B” status in October 2011. At the time when the Ombudsman decided to apply for the membership with ICC, the Commission had not been formally established yet because its enabling law came into force on 1 January 2011. This allowed the Ombudsman to apply without having to consult with the other Institution.

In this section we will take a brief look at the main features of the two National Human Rights Institutions relating to the Paris Principles. A more detailed overview of the Ombudsman’s Office and its accreditation will be provided in the following sections.

The Ombudsman’s Office was established with a 1997 Law based on the provision made in the 1991 Constitution. The Law sets the Ombudsman as an independent national institution with a mandate to protect human rights of individuals when these are violated by public authorities. The mandate does not extend to the private sector or the judiciary except for cases of delayed justice and ill performance by court services. As of 2009, the Ombudsman’s Office has been designated the National Preventive Mechanism under the Optional Protocol to the United Nations Convention Against Torture (NPM). The Ombudsman may employ own professional staff and has ten deputies, six of who head the regional offices covering the entire territory of the Country. The Ombudsman and the deputies are appointed by the Parliament to a once renewable eight-year term. The Office is funded from the State budget and may receive funding from other sources.

The Commission for Protection from Discrimination was introduced with the April 2010 Law on Prevention and Protection Against Discrimination as a seven-member independent state body. Its competence extends to private and public sectors. The Commission is mandated to advise and oversee the compliance of domestic legislation, policy and administrative measures with the law and accepted international and regional standards, including through individual complaints. The Commissioners are appointed by the Parliament to a once renewable five-year term in publicly advertised procedure. They are not professionally employed, are required to perform their own secretariat and can’t employ own staff. The Commission is centrally structured and located at the Capital. It is funded from the State budget and may receive funding from other sources.

The Parliament appointed the Commissioners in end December 2010. Among the seven, two are full-time senior government staff and one is employed at the Parliament. The Commission became operational in September 2011, having been provided State owned premises and annual budget to cover the Commissioner’s fees. The Commission has not shared publicly its programme or priorities. Its activities so far focused almost

exclusively on the complaints function.

While the Commission had not been officially assessed, a simple comparison with the Paris Principles raises concerns about both its independence and effectiveness. Most notable is the lack of broad mandate to promote and protect all human rights - the Commission concentrates on discrimination issues only - as well as that government representatives are among members with decision making powers and that the Commission has no full-time employed staff or secretariat at all. Also, the Ombudsman and Commission's mandates overlap for complaints concerning discrimination by the public administration. Since the Commission is in place, the two Institutions have not entered into formal agreement to address the overlap. Paris Principles would require such an agreement to be reached and widely disseminated to ensure clarity of protection and prevent any gaps or legal insecurity among potential complainants.

It is interesting to note that there was no fully fledged national consultation or a wider public discussion, except for eventual consultations within the authorities, about the National Institutions that would best ensure the human rights promotion and protection at the level required by the widely accepted international obligations – the Country is party to seven of the current nine core international and of the main Council of Europe human rights treaties. Civil society and experts have engaged in some limited discussion on the issue at the time of the designation of the National Preventive Mechanism under the Optional Protocol to the United Nations Convention Against Torture in 2008 and the adoption of the anti-discrimination law in 2009-10 but not on earlier such occasions of adopting or amending the 1991 Constitution or the Law on the Ombudsman.

### **The Ombudsman**

The Ombudsman was established with a 1997 Law based on the provision made in the 1991 Constitution (art. 77). According to the Law, the Ombudsman is an independent national institution with a mandate to protect human rights of individuals when these are violated by public authorities. The mandate does not extend to the private sector or the judiciary except for cases of delayed justice and ill performance by court services. The review of the legislation in 2003 to align the institution with the Ohrid Framework Peace Agreement which ended the internal 2001 inter-ethnic conflict and in 2009 to adjust the structure, tasked the Ombudsman specifically with the protection of the principles of non-discrimination and equitable representation, of children and persons with disabilities and of performing



as the National Prevention Mechanism under the Optional Protocol to the United Nations Convention against Torture.

The Ombudsman acts upon individual complaints or at own initiative to investigate situations of interest; may initiate legislation or amendments with the authorized entities to ensure compliance with the Constitution and ratified international treaties; may submit criminal charges and engage in human rights promotion and education. His/her decisions and recommendations are not legally binding. He/she is obliged to report back to the Parliament once a year and the Parliament is bound to review his report in public session attended by the Government Cabinet.

The Ombudsman is appointed and dismissed by the Parliament with a double majority vote of all and of Members of Parliament belonging to the non-majority ethnic communities, to a once renewable eight-year term. He/she has ten Deputies who are also appointed by the Parliament to a once renewable eight-year term. There are no specific provisions concerning the transparency of the appointments. The Ombudsman may employ own staff. The staff has the status of civil servants who are selected by the Ombudsman through the state servants' agency. The Office is funded from the state budget which is allocated by the Parliament against approval by the Ministry of Finance. The Ombudsman may receive funding from other sources.

The Office of the Ombudsman is operational as of March 1998. It is based in Skopje and, as of 2003, has established six field offices in the towns of Kumanovo, Kicevo, Strumica, Bitola, Stip and Tetovo to make the institution more accessible. Four of the Deputies head the substantive units at the central Skopje office looking at civil and minority rights; social protection; economic rights and environment; and the right to employment. The six other deputies head the field offices which cover all areas of the mandate. The 2009 law amendments obliged the Ombudsman to establish three separate units, one each for the NPM; for child and protection of the rights of persons with disabilities; and for equitable representation and protection from discrimination.

The current Ombudsman was appointed in December 2004. He is a lawyer and has earlier served as Minister of Justice and Constitutional Court Judge, which position he had left to become the Ombudsman. The Deputies, as required by the Law, are lawyers, six women and four men.

According to Ombudsman's 2011 annual report, the office has 78 staff including 47 women and 31 men, 39 of who ethnic Macedonians, 28 Albanians, three each Serb and Roma, two Vlach and one each Turk and Bosniak and Croat. The 2011 budget was some 75 million Denar (some 1.1 million Euros). The state budget could cover the running cost and

salaries while the activities were funded by Swedish SIDA, OSCE and SEE Children's Ombudsman Network. The Ombudsman's Office is member of the International and the European Ombudsman Institute, the Association of Ombudsmen and Mediators of the Francophone and the Association of Ombudsmen from the Mediterranean.

In the first years the Office was dealing with several hundred cases annually. This number had recently reached some 4,000. The Ombudsman has so far published over 30 thematic reports in addition to the regular annual reports which include statistics, overview of the situation and recommendations to address identified concerns. An important part of the Ombudsman's activities included awareness raising, educational and advisory work.

### **The ICC accreditation of the Office of the Ombudsman**

The ICC Sub-Committee on Accreditation reviewed the Ombudsman's application in its October 2011 session, recommending that the Ombudsman is granted non-fully compliant "B" status. Four specific recommendations were made on the issues that need to be addressed for the Ombudsman to be fully compliant with the Paris Principles. Two concern the founding law, one the funding of the Office and one its interaction with the international human rights system.

The first issue on the Ombudsman's Law concerns the mandate. The Sub-Committee noted that the law provided a broad protection mandate but not a mandate to promote human rights. The Sub-Committee commended the Ombudsman for having interpreted his mandate broadly and engaged in promotional activities but called the institution "to advocate for a wider mandate that includes all rights set out in international, regional and domestic instruments, covers all areas of human rights, and gives it explicit functions in the area of both protection and promotion of all human rights".

The second issue concerned the appointment, composition and pluralism of the institution. The Sub-Committee noted that the Law required "an adequate and equitable representation of citizens belonging to all the communities" for the deputies. While they currently included ethnic Macedonians and Albanians, the Sub-Committee highlighted that pluralism in the context of Paris Principles referred to "broader representation of the Macedonian society, not just ethnicity". The Sub-Committee also noted that the law required deputies to be lawyers and that the Secretary General must be appointed "from among the managing civil servants" which may unduly narrow and restrict the diversity and plurality of the institution. Finally,

the law did not provide a clear, transparent and participatory selection process that promoted the independence of, and public confidence in, the Ombudsman. The Sub-Committee raised in particular that the vacancies are not advertised publicly and that the selection process does not involve a broad consultation with civil society.

The third issue is that necessary funding had not been provided for the National Preventive Mechanism hosted at the Ombudsman's Office as of 2009. The Sub-Committee "urged the Government to provide the Ombudsman with the necessary financial resources to enable it to properly fulfill the obligations of the NPM" as required by the Optional Protocol to the United Nations Convention Against Torture. Here it is worth noting that the Ombudsman had often himself raised the issue that lack of funding had been among the reasons why it took from 2009 to June 2011 to make the NPM functional. Also, the Ombudsman had earlier, and most recently in his 2011 Annual Report, noted that the method of institutions' financing was inadequate, having particularly in mind that the Ombudsman "does not take part in the preparation of its budget", while the legal provision requiring the Ombudsman to elaborate on the funds required in front of the Parliament was "a formality without substantive importance".

Finally, concerning interaction with the international human rights system the Sub-Committee emphasized the importance of engaging with and following up the recommendations at the national level, in particular those by the Human Rights Council and its mechanisms (Special Procedures and Universal Periodic Review) and the treaty bodies. The Ombudsman was also encouraged to actively engage with the ICC, the European Group of National Human Rights Institutions, as well as international and national NGOs and civil society organizations.

## **Conclusion**

The notion of independence and effectiveness is central to National Human Rights Institutions. The system of international accreditation and the evolving improvements assists the National Human Rights Institutions to become and remain strong safeguards and advocates for the human rights promotion and protection at both national and international levels. Safeguarding credibility of National Institutions and providing guidance on how to achieve it through independence and effectiveness is an invaluable role that ICC had taken to assist the National Institutions, and ultimately the States, in the implementation of their international human rights obligations undertaken with the aim to ensure life in dignity for all the people.

It is hoped that the Ombudsman, relevant authorities and all other human rights actors in the country will take ICC recommendations strongly on board and unite efforts to strengthen the Ombudsman's Office and country's National Human Rights Institutions to bring them in compliance with the Paris Principles so that they are fully recognized as credible and effective safeguards of the human rights both at home and internationally. The greatest benefit of that will be for the people.

## Summary

Independence is at the core of international standards relating to National Human Rights Institutions - the Paris Principles. The system of international accreditation assists National Institutions to be safeguards of human rights at home and internationally. Ensuring independence and providing guidance how to achieve it is an invaluable undertaking of the International Coordinating Committee helping National Institutions to effectively fulfill their human rights role.

One of the two County's National Institutions – the Ombudsman – has applied and was accredited a not-fully compliant “B” status in 2011 with recommendations to amend the legislation to allow for a wider mandate, transparent appointment and diversity of composition as well as ensure adequate funding and interaction with the international human rights system.

It is hoped that all relevant actors will take the recommendations strongly on board to strengthen Country's National Institutions and make them credible safeguards of the realization of the international human rights guarantees.

## Резиме

Независноста е во јадрото на меѓународните стандарди за Националните институции за човекови права – Париските принципи. Системот на меѓународна акредитација им помага на Националните институции да бидат гарант на човековите права дома и на меѓународно ниво. Обезбедувањето независност и давањето насоки како таа да се постигне е непроценлив потфат на Меѓународниот координативен комитет кој им помага на Националните институции ефикасно да ја исполнат својата улога поврзана со човековите права. Една од двете Национални институции во државата - Народниот првобранител - поднесе барање и беше акредитирана со статус Б за нецелосна усогласеност во 2011 година, со препораки за измена на регулативата во насока на поширок мандат, транспарентно назначување и разновидност на составот како и да соодветно финансирање и соработка со меѓународниот систем на човекови права. Останува надежта дека сите засегнати страни сериозно ќе ги сфатат препораките да се зајакнат Националните институции во државата кои ќе прераснат во кредибилни гарант на остварувањето на меѓународните гаранции за човекови права.

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