

4. SPECIFIC RECOMMENDATIONS - Review under Article 18.1 of the ICC Statute

4.1 Thailand: National Human Rights Commission of Thailand (NHRCT)

Recommendation: The SCA recommends that the NHRCT be downgraded to **B** status.

At the SCA's session in October 2014, it gave the NHRCT the opportunity to provide, in writing, within one year of such notice, the documentary evidence deemed necessary to establish its continued conformity with the Paris Principles. The SCA is of the view that the information provided by the NHRCT has not adequately addressed its concerns.

The SCA reiterates its concerns as follows:

1. Selection and appointment

The SCA expressed concerns about the selection process for Commissioners. In particular, the SCA noted that:

- There is no requirement to advertise vacancies on the NHRCT;
- The selection committee established by Section 8(1) of the enabling law is composed of officials from a very small number of public institutions, with no clear representation, or a requirement for consultation with key stakeholder groups or civil society;
- There is no provision for broad consultation and/or participation, in the application, screening and selection process;
- There does not appear to be clear and detailed criteria upon which to assess the merit of eligible applicants.

The SCA notes that these concerns have not been addressed.

It is critically important to ensure the formalization of a clear, transparent and participatory selection and appointment process for an NHRI's decision-making body in relevant legislation, regulations or binding administrative guidelines, as appropriate. A process that promotes merit-based selection and ensures pluralism is necessary to ensure the independence of, and public confidence in, the senior leadership of an NHRI.

The SCA encourages the NHRCT to continue to advocate for the formalization and application of a process that includes requirements to:

- a) Publicize vacancies broadly;
- b) Maximize the number of potential candidates from a wide range of societal groups and educational qualifications;
- c) Promote broad consultation and / or participation in the application, screening, selection and appointment process;
- d) Assess applicants on the basis of pre-determined, objective and publicly-available criteria; and
- e) Select members to serve in their individual capacity rather than on behalf of the organization they represent.

The SCA refers to Paris Principle B.1 and to its General Observation 1.8 on 'Selection and appointment of the decision-making body of NHRIs'.

2. Functional immunity and independence

The SCA expressed its concern that the NHRCT is forced to rely on a variety of provisions in various laws to ensure its functional immunity and independence.

The SCA notes that external parties may seek to influence the independent operation of a NHRI by initiating, or by threatening to initiate legal proceedings against a member. For this reason, and given the unique role of NHRIs, the SCA is of the view that NHRI legislation should include a clear and unequivocal provision to protect members from legal liability for acts undertaken in good faith in their official capacity. Such a provision promotes:

- security of tenure;
- the NHRIs ability to engage in critical analysis and commentary on human rights issues free from interference;
- the independence of the senior leadership; and
- public confidence in national human rights institution.

The SCA encourages the NHRCT to advocate for the inclusion of provisions in its founding legislation that clearly establish functional immunity by protecting members from legal liability for actions undertaken in good faith in the course of their official duties.

The SCA refers to Paris Principle B.3 and to its General Observation 2.3 on 'Guarantee of functional immunity'.

3. Addressing human rights issues in a timely manner

The SCA expressed concern that the NHRCT had not addressed serious human rights violations in a timely manner.

In 2010, violent demonstrations and civil unrest resulted in a significant number of deaths and injuries as a result of alleged violations of human rights by law enforcement agencies. In October 2014, the SCA expressed concern that despite the serious nature of these violations, it took NHRCT three years to complete investigations and publish its report into the alleged human rights violations that occurred in 2010.

From July 2013 to May 2014, further demonstrations also resulted in a significant number of deaths and injuries. While acknowledging that the NHRCT has been operating in difficult circumstances, the SCA notes that the NHRCT completed and released its investigation report in November 2015.

The SCA reiterates its concern that the NHRCT has not been addressing human rights violations in a timely manner.

The SCA notes that in the situation of a coup d'état or a state of emergency, NHRIs are expected to conduct themselves with a heightened level of vigilance and independence, and to promote and ensure respect for human rights, democratic principles and the strengthening of the rule of law in all circumstances and without exception. Their actions may include monitoring, documenting, issuing public statements and releasing regular and detailed reports on human rights violations through the media in a timely manner. Furthermore, an NHRI should also undertake rigorous and systematic follow up activities and advocate for the consideration and implementation of its findings and recommendations in order to ensure the protection of those whose rights have been

violated. These actions, in particular the release of public reports, serve to combat impunity for human rights violations.

The SCA refers to Paris Principles A.3 and as well as to its General Observations 1.6. 'Recommendations by NHRIs', and 2.6 'NHRIs during the situation of a coup d'état or a state of emergency'.

4. Independence and neutrality

During its October 2014 session, the Chairperson confirmed that staff members of the NHRCT were displaying publicly their political affiliations whilst undertaking official functions.

The SCA welcomes the report of the NHRCT that the Chairperson has directed that staff should not publicly display their political affiliations whilst undertaking official functions and that such conduct would be contrary to the Code of Conduct.

The SCA is therefore satisfied that this issue of concern has been addressed.

5. SPECIFIC DECISIONS – RE-ACCREDITATION APPLICATIONS (Art. 15 of the ICC Statute)

5.1 Egypt: National Council for Human Rights (NCHR)

Decision: The SCA decides to defer consideration of the review of the NCHR to its second session of 2016.

The SCA first considered the re-accreditation of the NCHR in October 2011. At that time it deferred the application for one year so that the NCHR's re-accreditation could be undertaken following the enactment of proposed amendments to the enabling law to address compliance with the Paris Principles. The SCA made the following recommendation:

"The SCA commends the NCHR for the manner in which it has been undertaking its duties following the change of government earlier this year. In particular it notes:

- the decision of the members to resign en-masse in order to facilitate the reconstitution of the NCHR by the new interim government,*
- that following their resignation, members continued to undertake their duties pending the reconstitution of the new NCHR;*
- the on-going actions of the reconstituted NCHR in continuing to monitor the human rights situation in Egypt; and*
- its on-going documentation of allegations of human rights violations that occurred in the lead up to and following the popular uprising and subsequent change of government.*

Furthermore, the SCA notes that these activities have been undertaken in very volatile circumstances, made more difficult by the loss of the NCHR's premises through fire. The SCA also notes that the NCHR has advised the Government to enact amendments to its enabling legislation. This advice accompanied their resignation earlier in the year and it is expected that amendments are likely to be considered in 2012. It is for this reason that the Sub-Committee recommends deferral for one year so that the NCHR's re-accreditation can be undertaken following the enactment of amendments to the enabling law.