

Summary

Re-Accreditation OF THE NATIONAL HUMAN RIGHTS COMMISSION OF CHAD TO THE INTERNATIONAL COORDINATING COMMITTEE OF NATIONAL HUMAN RIGHTS INSTITUTIONS - November 2009 -

BACKGROUND

The NHRC first submitted its application for accreditation as a National Institution to the International Coordinating Committee of National Institutions (ICC) in 2000. It was successively reviewed in 2001 and 2003. At all times it was granted an "A(R)" status.

At the April 2006 ICC annual meeting, it was agreed that members currently accredited with status A would have their accreditation renewed as part of a regular process of reaccreditation, commencing in October 2006 according to an agreed schedule. In addition, at its April 2008 annual meeting, the ICC further decided that all National Human Rights Institutions (NHRIs) with A(r) status would be reviewed to ensure their compliance with the Paris Principles and their effectiveness. The National Human Rights Commission of Chad (hereafter the NHRC or the Commission) was therefore scheduled for a reaccreditation review in November 2009.

The following sections provide background information on the NHRC based on supporting documentation received from it by the National Institutions Unit of OHCHR, in its capacity as Secretariat of the ICC, in accordance with Article 10 of the ICC Statute and Rules 3.3 and 3.4 of the Rules of Procedures for the ICC Sub-Committee on Accreditation.

DOCUMENTATION PROVIDED IN SUPPORT OF THE APPLICATION

To permit the ICC to make a determination as to the compliance of the NHRC with the Paris Principles, the following documentation was submitted by the NHRC in support of its application (**in soft copy only**):

- Law N°031/PR/94 of 9 September 1994 establishing the National Human Rights Commission (NHRC) of Chad
- Decree N°163/PR/96 of 2 April 1996 fixing the working modalities of the NHRC
- By-Law N°095/PM/96 of 31 December 1996 determining the Internal Regulation of the NHRC
- Statement of Compliance
- Decision (by the Prime Minister) N°055/PM/2000 of 3 January 2001 on Members Allowances
- NHRC's Decision N°001/PM/CNDH/96 of 7 August 1996 on the NHRC Member Card
- List of Members
- The 2007 Annual Report

Additional information provided includes:

- Ruling N°002/PM/CNDH/96 of 7 August 1996 regarding the NHRC Magazine
- Plan of Action for 2008

The Secretariat notes that the NHRC has not submitted the budget and the list of staff.

CHARACTER OF THE NHRI

1. Establishment

The NHRC was established on 9 September through Law N°031/PR/94 (hereinafter "the Law") enacted by the High Council for the Transition of Chad¹. Article 1 stipulates the establishment of the NHRC with the mandate to promote and protect human rights. The Law regulates the establishment

¹ It is not expressly stated whether the High Council of the Transition is a legislative or executive body. But it could probably be a legislative body.

(chapter I); responsibilities (chapter II); composition (chapter III); functioning (chapter IV); transitional and final provisions (chapter V); and indicates that “other working modalities of the Commission shall be fixed by Decree of the Council of Ministers on the proposal of the NHRC” (article 12).

Further to this, on 2 April 1996 the Council of Ministers adopted the Decree N°163/PR/96 (hereinafter “Decree”) regulating the working modalities of the NHRC. Article 16 of the Decree stipulates that “The Commission shall draft its Internal Regulations which shall be enacted by the Prime Minister, determining also:

- ◆ causes of incompatibility with the NHRC’s membership;
- ◆ period and duration of the regular sessions of the Commission;
- ◆ functions of the Bureau members;
- ◆ managing rules of the resources granted to the Commission;
- ◆ modalities of publishing and managing a NHRC’s Magazine

The By-Law N°095/PM/96 endorsed by the Prime Minister (on the NHRC’s proposal) on 31 December 1996 contains the NHRC’s Internal Regulations. Through NHRC’s Decision N°001/PM/CNDH/96 of 7 August 1996, the Commission created the NHRC Member Card (i.e. identification card for its members) Prime Minister’s Decision N°055/PM/2001 of 3 January 2001 further regulated the NHRC Members Allowances.

Article 1 of the Decree stipulates that the headquarters of the NHRC are in N’Djamena.

The Law is silent on the establishment of field presences as well as any jurisdiction’s limitations.

2. Independence

Article 2 of the Law states the following: “The NHRC is established under the Prime Minister,” Article 9 of the Internal Regulations states that the Office of the Prime Minister provides the NHRC with staff, resources and necessary services for the performance of the NHRC’s functions of the Commission; the Office of the Prime Minister covers the cost of the staff and its resources and services. Article 4 of the same stipulates: “The NHRC Members Allowances are entrenched in the regular budget of the Office of the Prime Minister. These allowances shall be settled by a by-law of the Prime Minister”.

Under article 6 of the Law: “the NHRC is autonomous towards the selection of issues it examines without selectivity, on its own initiative. The Commission shall freely issue and address its recommendations to the Government and ensure their publicity”.

Article 19 of the Decree details the protection provided to the members of the NHRC in the following terms: “No member of the Commission shall be either arrested or prosecuted -until one year after the end of mandate-, for actions accomplished pertaining to article 5 of the N°031 (...) except for actions against State’s safety”. Article 20 further indicates that penal code’s provisions regarding prevention of threats, insults and acts of violence against representatives of the public authorities, are also applicable to the NHRC.

The Internal Regulations in article 4 provide for the incompatibilities of the membership of the NHRC in connection with any functions which may affect the independence, credibility and confidentiality of the Commission, including work in the public service and political parties.

3. Composition, appointment process, tenure

3.1 Composition

The composition of the NHRC is provided by the Law (article 7) and further detailed in the Decree (article 2) and Internal Regulations (article 3). It consists of 21 members². According to article 2 of the Internal Regulations, the Commission’s membership consists of members (*titulaires*) and vice-

² Under article 7 of the Law, the Commission is composed of 21 members and article 2 of the Internal Regulations states in addition that apart from members (*titulaires*) (21), there are also 21 vice-members who only hold office in case of absence or impediment of members.

members, who hold office only in case of absence or impediment of members. On the Chart provided by the Commission, only 16 members and 14 Vice-members are mentioned.

The Commission Bureau is composed of the Chairperson, Deputy Chairperson and Secretary General is elected amongst members (article 10 of the Law and 5 of the Decree).

Considering the list provided by the NHRC, there are at the present 16 members (including the Chairperson, Deputy Chairperson and Secretary General) out of 21 provided by the Law. Amongst these, 3 are women, representing 18.75% of the current positions.

Ethnic, minority, religious, and people with disabilities groups are not specifically represented within the Commission (the Law and Internal Regulations contain no provision on that matter).

In the statement of compliance, the NHRC declared that representatives of the Government are 11 against the 8 from civil society (article 7 of the Enabling Law).

Under article 8, all the members have deliberative voice (voting rights), including those representing the Government.

3.2 Selection and Appointment

The selection and appointment processes are spelled out in the Law (article 9) and the Decree (article 2).

Pursuant to article 9 of the Law, candidates for membership of the Commission are proposed by:

- ◆ the relevant Ministers, i.e. Minister of Communications (one representative), Minister of Justice (one), Minister of Public Health (one), Minister of Public Service and Labour (one), Minister of Foreign Affairs (one), Minister of Woman Condition and Social Affairs (one);
- ◆ Human Rights Associations (eight);
- ◆ Trade Union Organisations (four); (4) Personalities with proven integrity and human rights skills (three), nominated respectively by the President, Prime Minister, and Parliament.

It's stated that the members are selected by the respective bodies and submitted to the Prime Minister's approval and appointment for a 2 year term renewable (no limitation) (article 9 of the Law), except for those directly nominated by the President, Prime Minister and Parliament.

Membership criteria are not determined by the Law.

The NHRC indicated in the statement of compliance that the principles of publicity, transparency, broad consultation, openness to different groups of societies, as well as the human rights experience profile are neither requested by the selection/appointment related provisions in the Law nor followed in the practice.

3.3 Tenure

The term of office of members is 2 years renewable (article 9 of the Law). Bureau members are elected for 2 years renewable once (article 6 of the Decree). As per the statement of compliance members are part-time.

Article 4 of the Decree states that "Members' allowances are included in the regular budget of the Office of the Prime Minister". The By-Law N°055/PM/2000 provided by the NHRC stipulates that Bureau members (Chairperson, Deputy Chairperson and Secretary General) are granted F CFA 100,000 (€152) monthly; while other members perceive F CFA 100,000 (€ 152) per session (knowing that there are 4 sessions per year).

The Internal Regulations contain provisions on the end of membership (removal/dismissal). Under article 5, a member may be removed from the Commission in case of:

- ◆ unjustified absences to sessions of the Commission;
- ◆ non performance of duties;
- ◆ manifested lack of discipline;

- ◆ in case of conduct that may hamper the effectiveness, credibility and confidentiality of the Commission.

Please indicate which is (if any in the law) the procedure to dismiss/removes the member. The same provision further indicates that in anticipation of the decision of the Commission on the matter, the Bureau may take conservatives measures if the situation requires.

Article 6 of the Internal Regulations further stipulates: “Any member may lose the membership in case of:

- ◆ incompatibility
- ◆ final decision of a court for moral offence;
- ◆ absence for two years due to illness or mission in abroad;
- ◆ resignation.

The body which nominated the member shall proceed to the replacement within one month (article 6).

The particular case of Bureau members is set out in article 7 of the Decree: “In case one or more Bureau members heavily fails to perform their responsibilities, and therefore impede the normal functions and/or credibility of the Commission, the member can be dismissed by a majority of 2/3 of members during a meeting convened by the Chairperson of the highest Judicial Court on the request of half of Commission members”. This meeting is chaired by the Chairperson of the highest Judicial Court. The dismissed member shall be replaced within one month at latest”.

Any conflict amongst Commission members is resolved by the Chairperson of the highest Judicial Court (Article 17 of the Decree).

4. Organizational infrastructure

4.1 Infrastructure

All the members of the Commission constitute the Plenary which meet once per quarter for ten days under the chair of the Chairperson.

Special sessions are also convened by the Chairperson after consultation of Bureau members or at the request of 2/3 of members (article 3 of the Decree). The Chairperson also convenes and chairs the meetings of the Bureau (article 10 of the Internal Regulations). The Bureau is responsible for the NHRC management, by inter alia establishing the agenda of the sessions and the draft annual budget of the Commission.

Article 10 of the Decree states that “The NHRC may establish working groups among members in order to examine particular issues and make all necessary recommendations”.

The Chairperson’s responsibilities are mainly to ensure the implementation of the decisions of the Commission and Bureau and proceed with expenditure.

The Secretary General is responsible for drafting and presenting the summary report of each session of the Commission and managing the patrimony of the Commission (article 10 of the Internal Regulations). In the statement of compliance, it is indicated that the administration and management of the Commission are under the Secretary General who supervises the Secretariat composed of one Complaint Handling Officer, two archivists, one Secretary, one Guardian, and one Orderly (*Planton*).

4.2 Staffing

Under article 9 of the Decree, “The Office of the Prime Minister provides the technical staff, resources and necessary services for the performance of the functions of the Commission. The Office of the Prime Minister covers the cost of the staff and its related resources and services”.

There is no further provision in the enabling documents regarding the size and profile of the staff.

The NHRC indicated in the statement of compliance that it is not authorised to hire staff apart from those provided by the Office of the Prime Minister. The Commission also declares that the staff does not reflect pluralism; out of a total of 4 staff only 1 is a woman.

4.3 Premises (accessibility)

Article 9(4)(2) of the Decree is applicable here. In the statement of compliance, the NHRC described its premises as a ground floor apartment located in a public street of a working district. It is easily accessible to people with disabilities and complainants. The premises are composed of 6 offices.

The Commission is also joinable by phone. It further stated that the Commission has no field office.

4.4 Budget

There is no provision in the enabling Act or elsewhere which deals with the budget amount.

The NHRC declared in the statement of compliance that its annual budget amounts F CFA 50,000,000 (€76,335) and is quarterly delivered to the Commission.

It is unilaterally granted to the NHRC by the Government without any involvement of the Commission in the drafting process. The budget is submitted to Parliament by the Office of the Prime Minister,. The Commission manages it autonomously and it is accountable to the Finance Services.

The NHRC laments that the budget is inadequate, in addition to the fact that it is not increased by any support of external partners.

During 2004-2005 the Commission did not get any budget and was about to close its office because of lack of funds).

The Commission further indicated that even the funds for the first two quarters of 2009 are not yet provided.

5. Working methods

The Internal Regulations describe the organisation of the sessions of the Commission (articles 7 and 8) and the Bureau's functions, including the Chairperson, Deputy Chair and Secretary General (articles 9 and 10), as provided above in paragraph 4.1.

Article 3 of the Decree indicates that NHRC's members meet once per quarter.

The provisions on working group is set out in the Decree (article 10) which further indicates that the Commission or working groups may, if necessary hear or consult persons or organisations with particular competence on human rights.

The NHRC provided its Plan of Action for 2008 As a background on the human rights situation in the country, the Commission raised serious concerns over the year 2008 about the persisting war in Darfur and its consequences such as the arrival in Chad of thousands of Sudanese Refugees, insecurity in Eastern Chad, serous environmental implications. Another issue of concern is the Rebels threat to resume hostilities which may result in human rights violations such as killings, rapes, displacement of persons, goods destruction, lootings, etc.

Actions planed to address these issues consisted of two strategic axes, including setting up a Special Unit to assist victims; and diffusing national and international human rights instruments. More specifically, the NHRC planed to:

- (1) establish a Complaint-handling Unit therein;
- (2) publicize national laws and international instruments, including through media;
- (3) organise trainings on human rights (refugees rights, public demonstrations and peacekeeping, etc.); (4) strengthen partnership with public and private institutions;
- (4) visit detention centres, and discuss with administrative, military, religious and other authorities on human rights issues;

- (5) participate to NHRIs sessions and other international meetings; and
- (6) organise regular sessions of the Commission.

GENERAL MANDATE

6. Mandate to protect human rights

The mandate to protect human rights the NHRC is established in the Enabling Law and Decree. Article 4 of the Law stipulates “The NHRC shall carry out investigations, studies, and publications, and provide the Government with opinions on human rights and fundamental freedoms issues...”

Article 6 of the Law deals with the powers of the Commission: “The NHRC is autonomous towards the selection of issues it examines without selectivity, on its own initiative. The Commission shall freely issue and address its recommendations to the Government and ensure their publication within the public opinion”.

The Enabling Law defines human rights in general terms without any specific reference to civil, political, economic, social and cultural rights which it deals with in practice. In addition, article 11 of the Decree recognises to anyone victim of “civil, political, social or cultural rights violation committed through action or inaction of the Administration” the right to file a complaint to the Commission.

6.1 Advisory Functions

Under article 3 of the Enabling Law “the NHRC shall (1) address to the Government opinions on freedoms and human rights, including woman’s condition, rights of the child and people with disabilities; (2) assist the Government and other institutions nationally and internationally on any issues regarding human rights”. Article 5 further provides that the Commission shall issue opinions on (1) an existing and actions of a political police; (2) torture and inhuman and degrading treatments practice; (3) an existing secret detention places; and (4) forced disappearances and secret transfers.

6.2 Functions regarding national legislation

The above mentioned article 3 further provides that the NHRC shall “assist in revising existing legislation and drafting new standards in line with the Charter on Human Rights and Freedoms adopted by the National Sovereign Conference, as well as regional and international instruments”.

The Commission declared in the statement of compliance that it fulfils these functions by participating actively to meetings and seminars organised by the Government with the aim to contribute to discussions and provide advice.

The NHRC also works in close cooperation with the Commission on Laws and Standards of Parliament to complying national laws and norms with international standards.

6.3 Encouraging ratification and implementation of international standards

According to article 4 of the Law, the Commission has also competence to recommend to the Government the ratification and implementation of international standards and practices.

The NHRC stated that in achieving this function, it proceed as previously provided under paragraph 6.2, by cooperating with and assisting relevant authorities, i.e. the Government and Parliament.

6.4 Monitoring functions

As per article 5 of the Law, the monitoring functions of the Commission consist of issuing opinions on (1) actions of the police; (2) occurrence of us of torture and inhuman and degrading treatments; (3) secret detention places; and (4) forced disappearances and secret transfers”.

Under articles 11 of the Law and 10 of the Decree, the Commission has free access to any governmental institution in order to get necessary information for its investigations. In addition, the

Chairperson of the Commission may request from relevant governmental departments to draft an analysis or report on any issue resorting from their responsibilities.

6.5 Investigation

Article 11 of the Decree states that the Commission may act on its own initiative or complaint of anyone victim of “civil, political, social or cultural rights violation committed through action or inertia of the Administration”.

The Commission Bureau shall, if the complaint satisfies admissibility requirements, appoint among its members a Special Rapporteur (SR) to investigate on the matter. In the performance of its mandate, “the SR is authorised to: - notify for explanation, the complaint to the agent blamed, Administration, or any other person or organisation who may throw light on the matter; - to have access to all reports, registers and other documents, as well as any objects and places relating to the investigation; - receive, in the fulfilment of his mission, the co-operation of the superiors of the implicated agent, including members of the Government. He/she will submit, within 15 days of his appointment, a report on the actions he/she undertook and, if necessary, will give his/her opinions and recommendations to the Commission” (article 14 of the Decree). Article 15 of the Decree further provides that “the Commission shall meet immediately to examine the report and take all necessary measures, including having recourse to Courts; Parliament; and the Head of State”.

The NHRC indicated in the statement of compliance that individuals, the Government and other public bodies are not obliged to provide the NHRI with requested documentation.

6.6 Reporting

Article 6 of the Law implies that “the Commission shall freely issue and address its recommendations to the Government and ensure their publication within the public opinion”.

The annual reports of the Commission are sent to partners and made available within the Documentation Centre of the NHRC and consulted by the public.

The latest annual report provided by the Commission has 12 pages and dated 2007. The content include briefings on meetings the Commission held with national stakeholders to introduce the new appointed Secretary General (in 2007) and the participation of the NHRC to the African NHRIs 6th Conference (October 2007 in Kigali, Rwanda), as well as its attendance to workshops and seminars organised by governmental agencies.

7. Mandate to promote human rights

7.1 By raising awareness on human rights norms and issues

In the statement of compliance, the NHRC indicated that it achieves awareness raising through the publication of leaflets and organisation of trainings and conferences as well as radio broadcasting programmes.

7.2 Through programmes for teaching and research

Pursuant to the statement of compliance, the NHRC has developed, in cooperation with the Ministry of National Education and with the financial support of UNDP, a Human Rights Manual for human rights education in 1st and 2nd degrees of colleges. The Commission also provides teaching programmes to the University and National School for Administration and Magistrates.

7.3 By addressing public opinion

In the statement of compliance the Commission indicated that its opinions and communiqués are released through public and private media.

The Commission stated that it opted for signing with public and private media, a memorandum of understanding including annual programmes of activities. Thus it has a time slot for its activities on private and public radios.

8. Quasi-jurisdictional functions (optional, only for those NHRIs having quasi-judicial powers)

The NHRC indicated that it has no quasi-judicial powers.

RELATIONSHIP WITH RELEVANT HUMAN RIGHTS STAKEHOLDERS AND OTHER BODIES

9. Relationship with national stakeholders

9.1 Relationships with Civil Society

According to the statement of compliance, the composition of the Commission includes 12 representatives of civil society organisations (article 7 of the Law). It also indicated that in practice it closely associates NGOs and Trade Unions to its training sessions, conferences, visits on the ground, etc.

9.2 Relationship with other bodies

Pursuant to articles 11 of the Law and 10 of the Statute, the Commission has free access to any governmental institution in order to get necessary information for its investigations purpose. In addition, the Chairperson of the Commission may request from relevant governmental departments to draft an analysis or report on any issue resorting from their responsibilities.

The Annual Report 2007 provided by the NHRC mentions seminars and workshops organised by governmental departments with the participation of the Commission, i.e. Launching Workshop on the Initiative for Minings Transparency; and Workshop for the Assessment and Validation of the Programme on Mediation between Stockbreeders and Farmers. From November 2006 and May 2007 the Commission participated also to some workshops held twice in Bakara and once in Siloé, on drafting and validating initial and periodic reports to be submitted to Treaty Bodies (page 10 of the Report).

10. Cooperation with the United Nations and other organizations

In the statement of compliance, the NHRC declared that the legal instruments did not formally provide for the cooperation with United Nations and other organisations, but in practice it interacts in several areas such as the protection of Refugees and Displaced Persons with UNCT and other Agencies, especially UNICEF, UNDP, MINURCAT, UNHCR.