



**NATIONAL HUMAN RIGHTS COMMISSION OF
INDIA**

**NOTE ON ICC POSITION PAPER ON THE ROLE OF
NATIONAL HUMAN RIGHTS INSTITUTIONS IN
HUMAN RIGHTS COUNCIL**

BY

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on the 31st July, 2006,

**at the 11th Annual Meeting of Asia Pacific Forum of NIs,
Suva, Fiji.**

**NOTE ON ICC POSITION PAPER ON THE ROLE OF
NATIONAL HUMAN RIGHTS INSTITUTIONS IN HUMAN RIGHTS COUNCIL**

The Resolution establishing the Human Rights Council (GA Res 60/251 of 15 March, 2006), the General Assembly, while addressing the question of relationship between the Council and other entities, very specifically referred to the Council to work in “close cooperation in the field of human rights with Governments, regional organizations, **national human rights institutions** and civil society”.

During the 17th Session of the International Coordinating Committee of National Human Rights Institutions (ICC) held in April, 2006, it was decided that a Working Group consisting of one representative each from the Regional Groups of NHRIs should prepare a draft ICC Position Paper on the role of NHRIs in the Human Rights Council, so that there is a clear agreed concept paper available to the ICC to present a Position Paper. The suggestion for preparation of the concept paper by the Regional Groups of NHRIs was made by Justice Anand, Chairperson, National Human Rights Commission of India, which received overwhelming support.

Working Groups were formed to examine the potential role of National Human Rights Institutions in the new UN Human Rights Council. In terms of the APF, the four institutions from Australia, India, Indonesia and the Philippines formed a Working Group to develop a draft APF position paper on the same issue. The draft Position Paper to be prepared by the Working Group was to be circulated for consideration and adoption by the Forum Councillors and ultimately to be forwarded to the ICC for developing the ICC position paper.

The APF engaged Professor Andrew Byrnes, a renowned international law expert to lend his expertise and knowledge for preparation of the Position Paper by the Working Group of the APF.

Since, at the ICC meeting, the Asia Pacific Region was asked to nominate one NHRI and a particular person as its Spokesperson who could be engaged in discussion with other three representatives of the other three regions, in case a debate over the concept paper become necessary, Mr. John von Doussa QC, President of the Australian Human Rights and Equal Opportunity Commission, through his e-mail of 15th May, 2006, suggested that Justice A.S. Anand, Chairperson, National Human Rights Commission of India to be the Spokesperson for APF. From the communications sent by Mr. Kieren Fitzpatrick, it appears that the Forum Councillors agreed to the suggestion and consequently Justice A.S. Anand of NHRC (India) was nominated as the Spokesperson of the APF and the APF Secretariat was made the nodal office.

With inputs from Prof. Byrnes, a draft Position Paper was prepared by the APF and circulated to Forum Councillors. Comments on it were sent by President of the Australian Human Rights and Equal Opportunity Commission as well as by National Human Rights Commission of India. Some other Forum Councillors also sent their comments to the APF Secretariat on the draft position paper. Ultimately, the draft paper was put in position by the APF after taking into account the comments received to the regional draft paper. The paper concentrated on the nature of NHRIs' participation in the working of the Council. The APF Position Paper of June, 2006 forms **Annexure-A** to this note.

The position paper was forwarded to the ICC for preparation of the ICC Position Paper.

The International Coordinating Committee (ICC) prepared a draft paper and circulated it to NHRIs through their regional arrangements. So far as NHRC (India) is concerned, it had serious reservations to 'Section 4' in the ICC position paper, particularly about the role of the NHRIs in the

Special Procedures and the Universal Periodic Review. Similar reservations were expressed by some others also. The comments of the Forum Councillors, including Australia, Indonesia and India were taken note of and conveyed to the ICC by the APF.

In its Position Paper of June, 2006, APF specifically said:

“The APF would like to respond to one specific proposal contained in the discussion paper dated 4 May 2006 circulated to ICC members. Section 4.1 of the paper states that the Human Rights Council be “strongly encouraged to establish a focal point for the protection of human rights defenders, which should interact closely with the ICC in relation to the protection of NHRIs and their members, including in relation to threats against them”. The APF believes that, while this is an important issue, to raise it at this stage would be a distraction from the central issue of the participation of NHRIs in the Council. It is therefore, suggested that the topic be omitted from the ICC Position Paper and addressed at a later date once NHRIs have secured the right to participation in the Council.”

The APF was informed by ICC that its view point would be duly reflected in the ICC Position Paper.

It, however, appears that the ICC Position Paper of 25th June, 2006 was prepared but the view point of the APF did not find its reflection therein. The APF Spokesperson, Justice A.S. Anand, who was in Geneva on that day, raised his objection and in his e-mail sent to Mr. Kieren Fitzparick stated thus:

“Dear Kieren,

Greetings from Geneva.

The proposed meeting of the WG and other NHRIs with the ICC yesterday did not take place for reasons not known to me. I was, however, present at the Palais Wilson and Ms. Anne Marie Garrido and the Vice-chair of the ICC arrived and we waited for others to join but no one came.

The ICC position paper on NHRIs and UNHRC as a final position paper was given to me by Ms. Anne Marie Garrido for consideration on 25th June.

As spokesperson of the APF I had again reservations with regard to Section 4 in the ICC position paper. What I found was that the only difference in substance between the ICC draft paper on which we had already sent comments on behalf of the APF and the position paper of 25th June was that the word “should” has been substituted by the word “could” and the rest of the text has been retained. I

pointed it out to Ms. Anne that this position was not acceptable to me as mere replacing of the word "should" by "could" did not convey the view point of APF.

Since the APF Member Institutions were in support of the general issue of NHRIs participation in the Human Rights Council, as outlined in Section 1 to 3 of the ICC draft paper, I suggested that those sections together with part of suggestions in Section 4, as sent by the APF in its comments to the draft paper may be put in as the position paper with the Rider at the end that a further elaboratory document containing the details to the role of the NHRIs particularly in the special procedures and participation in the universal periodic review etc, would be submitted to the Council, if necessary, subsequently. I thought, I will keep you updated on this.

Regards,

Justice A.S. Anand
Chairperson, NHRC, India.

Mr. Kieren Fitzparick, through his reply to the e-mail, agreed with Justice Anand and conveyed to him that the position taken by the APF earlier, as reiterated by the Spokesperson at Geneva in respect of the ICC Position Paper of 25th June, was also supported by Indonesian Commission and that as many as 17 of the Forum Councillors had subscribed to with that position. The APF, therefore, insisted that in the ICC Position Paper, paragraph relating to Section-4 should be so clarified as to truly reflect the view point of APF.

In the final ICC Position Paper, this view point of the APF was reflected with regard to contribution of NHRIs to the new functions particularly the procedures and periodic review etc., the final ICC Position Paper of 27th June, 2006 stated that the ICC would submit **Volume-II** of the Position Paper relating to Special Procedures and participation in the Universal Period Review Mechanism by 1st August 2006.

The general segment of the Statement made on behalf of the ICC at Geneva on June 22, 2006 is at **Annexure-B** to this note.

The position of National Human Rights Commission of India with regard to Section-4 in the position paper of ICC is that the issue has to be

debated during the meeting of the APF at FIJI and would also form part of discussions at the annual meeting of the ICC at Bolivia. Therefore, the comments with regard to NHRIs interaction with the special procedures and participation in the universal periodic review mechanism can be finalized only thereafter and communicated to the ICC for appropriate action and that no comments could be sent by 1st August, 2006 as suggested by ICC. This position has been conveyed to APF by NHRC (India) vide e-mail dated 18.7.2006.