

BACKGROUND PAPER

THIRD MEETING OF THE ASIA PACIFIC FORUM OF NATIONAL HUMAN RIGHTS INSTITUTIONS

7th to 9th SEPTEMBER, 1998, JAKARTA

- ITEM: ISSUES MANDATED BY THE SECOND REGIONAL WORKSHOP**
- 1. DEVELOPING HUMAN RIGHTS JURISPRUDENCE; A MECHANISM FOR COLLATING, DISSEMINATING AND DEVELOPING HUMAN RIGHTS JURISPRUDENCE**
 - 2. TERMS OF REFERENCE FOR THE ESTABLISHMENT OF THE JUDICIAL ADVISORY COUNCIL OF THE ASIA-PACIFIC FORUM**

Submission by the Indian National Human Rights Commission and the Human Rights and Equal Opportunity Commission of Australia

BACKGROUND

The Second Workshop of the Asia-Pacific Forum of National Human Rights Institutions, held in New Delhi in September 1997, “stressed the importance of collating, disseminating and developing human rights jurisprudence. The Workshop requested the Forum Secretariat to establish and initiate, as soon as practicable, a mechanism which would collate and disseminate human rights jurisprudence and to initiate early contacts with national institutions for this purpose. In addition, the Workshop agreed in principle to set up an International Human Rights Law Advisory Panel to the Forum”. A sub-committee comprising representatives of the national institutions of India and Australia was established to address the various considerations relevant to the operation of such a panel and it was requested to submit a paper for consideration at the next meeting of the Asia Pacific Forum of National Human Rights Institutions.

PURPOSE

The purpose of this paper presented by the Indian and Australian Commissions is

- (i) to reiterate the need for a mechanism for collating, disseminating and developing human rights jurisprudence within the Asia Pacific region; and
- (ii) to recommend terms of reference for a Judicial Advisory Council of the Asia-Pacific Forum to provide advisory opinions on the interpretation and application of international human rights standards.

RECOMMENDATIONS

It is recommended that the Third Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions:

1 Jurisprudence mechanism

1.1 Entrust the Forum with the responsibility for setting up a mechanism for the collation, dissemination and development of human rights jurisprudence in the Asia Pacific region, after consulting with members of the Forum.

2 Judicial Advisory Council

2.1 Endorse the establishment of the Judicial Advisory Council of the Asia-Pacific Forum to provide advisory opinions to the Forum and its members, at their request, on the interpretation of international human rights standards, in accordance with the terms of reference approved by the Forum for the Council.

2.2 Adopt the attached draft terms of reference for the Judicial Advisory Council of the Asia-Pacific Forum.

2.3 Invite each member of the Forum to nominate an eminent jurist from its country for membership of the Judicial Advisory Council.

2.4 Determine that efforts be made to convene a meeting of the Judicial Advisory Council in conjunction with the next meeting of the Forum.

DRAFT TERMS OF REFERENCE OF THE JUDICIAL ADVISORY COUNCIL OF THE ASIA-PACIFIC FORUM

It is proposed that the following draft terms of reference be adopted for the Judicial Advisory Council of the Asia-Pacific Forum of National Human Rights Institutions.

1. ESTABLISHMENT OF THE JUDICIAL ADVISORY COUNCIL OF THE ASIA-PACIFIC FORUM

The Asia-Pacific Forum of National Human Rights Institutions establishes the Judicial Advisory Council (the Council) as a specialist advisory body to provide, on request, jurisprudential guidance to the Forum and its member institutions.

2. JURISDICTION

The Council shall provide comment, opinion and advice on the interpretation and application of relevant international human rights standards, upon request, having regard to settled principles of international law and the treaty obligations of the concerned states.

3. REQUESTS TO THE COUNCIL

- (i) A request to the Council may be made only by a unanimous decision of the Forum or by a national institution that is a member of the Forum. The Forum may request an opinion from the Council on a general issue of human rights law of broad regional concern. An institution may request an opinion from the Council exclusively on an issue within the institution's competence or having relevance to the institution's own country.
- (ii) The jurisdictional competence of the Council is limited to consideration of specific situations or specific human rights questions. Where an issue is international in character (for example, trafficking in persons) the Council is only authorised to comment on a situation in a particular country with the agreement of the national institution of the country concerned. Apart from citing precedents, the Council is not authorised to comment on situations outside the country of the requesting institutions.
- (iii) The Council has no jurisdiction to receive requests from individuals, organisations, domestic judiciaries or governments. The Council may propose issues on which an opinion might be requested but it has no authority to offer an opinion without a unanimous request from the Forum or a national institution which is a member of the Forum.

4. CONFIDENTIALITY AND ADVISORY OPINIONS

- (i) All matters referred to the Council shall be administered and considered on a confidential basis, unless the requesting institution wishes it to be treated otherwise. Where a matter is referred to the Council by a decision of the Forum, the Forum may decide that the matter be treated in public, provided that the Council does not object.
- (ii) Opinions or views expressed by the Council to the referring institution or the Forum are only advisory and are not, in any sense, legally binding. The Council's views may contain recommendations or suggestions as to how they might be implemented but the Council cannot instruct the Forum or Member institutions on their activities or require them to take any particular actions.

5. STRUCTURE, COMPOSITION AND PROCEDURE

- (i) The Council shall be comprised of eminent jurists who have held high judicial office or senior academic or human rights appointments.
- (ii) Each member institution of the Forum may nominate one national of its own country to serve on the Council.
- (iii) Each member jurist serves a five-year term, which may be renewed once. Members serve in their personal capacity independent of their governments. Members are not able to delegate their functions to any other person.
- (iv) The Council shall appoint one of its members as the President of the Council, it being desirable to rotate the Presidency to the extent possible. The President of the Council is responsible for coordinating requests for advice, determining whether an issue is within the Council's jurisdiction and for arranging meetings of the Council. The President may refer a request for an opinion to the full Council or to a board of at least three members of the Council, as appropriate.
- (v) The majority of work undertaken by the Council shall be conducted by correspondence. The Council shall meet as required by its workload and its meetings should coincide, to the extent possible, with the annual meetings of the Asia-Pacific Forum.
- (vi) The Secretariat of the Forum serves as the secretariat to the Council.
- (vii) The Secretariat of the Forum meets the costs of the Council's deliberations and reasonable expenses. It is not envisaged that Council members shall receive financial remuneration for their services.

(viii) In all other respects the Council determines its own rules of procedure.

6. REVIEW

The composition of the Council will be reviewed following the first two years of its operation to determine whether the number of jurists is appropriate to the Council's workload.