

FIFTH ANNUAL MEETING OF THE ASIA-PACIFIC FORUM OF NATIONAL HUMAN RIGHTS INSTITUTIONS

ROTORUA, NEW ZEALAND, 7-9 August 2000

WORKSHOP:
ESTABLISHING NEW NATIONAL HUMAN RIGHTS INSTITUTIONS
PROPOSED GUIDELINES

BACKGROUND

The desirability of having guidelines for the establishment of national institutions has been raised at several Forum meetings. Eight national institutions have so far been established in the region in accordance with the Paris Principles. While the approach of each of the eight countries toward establishing its national institution has taken account of international standards and, since 1993, of the Paris Principles, there are no specific guidelines for the region as to the process that should desirably be followed. As work is under way in a number of Asia Pacific countries aimed at the establishment of national institutions, there is a widespread view that it would be valuable to have a set of guidelines emanating from the Asia Pacific Forum, the only regional organisation representing such institutions.

The Program of Action adopted by the Forum's Workshop on the theme of *National Institutions and Non-Governmental Organisations: Working in Partnership* held on 26 – 28 July 1999 in Kandy, Sri Lanka, included the following recommendations:

8.1 Recommended that the Asia Pacific Forum, in consultation with NGOs, should adopt by its Annual Meeting in 2000, minimum standards for mechanisms and processes for the establishment of new national human rights institutions in the region in conformity with the Paris Principles. These guidelines should pay particular regard to the need for new institutions to have independence built into their mandates, for processes and mechanisms to be developed in partnership with NGOs, for public hearings and for public review of proposed national human rights institution legislation and for transparency in the appointment of commission members. Such institutions should have advisory, educational and investigatory functions;

8.2 Agreed that, in cooperation with the Office of the High Commissioner for Human Rights, national institutions and NGOs would provide information and advice to governments and NGOs of other countries, where requested, on models for the establishment of national institutions in conformity with the Paris Principles.

The Fourth Annual Meeting of the Forum, held in Manila, the Philippines, from 6 to 8 September 1999 included the following in its statement of conclusions:

The Forum also requested the Secretariat to prepare, in consultation with non-government organisations and the Office of the High Commissioner for Human Rights, guidelines for the process of establishing national institutions in accordance with the Paris Principles for consideration at the Fifth Annual Meeting of the Forum.

Because of resource constraints, it has not been possible in the period between the Fourth and Fifth Annual Meetings to manage a consultation process that would have enabled the Secretariat to present an agreed set of draft guidelines to the Fifth Annual Meeting. However, the program of the Meeting has been structured to include a workshop on *Establishing New National Human Rights Institutions*. This will create an opportunity for the present paper to be

discussed by interested participants. If desired by Forum member institutions, the draft guidelines could then be considered and possibly adopted by the Forum at the Fifth Meeting.

THE PARIS PRINCIPLES

At its Fourth Annual Meeting, the Forum reaffirmed the positions it had taken at each of its previous meetings by stressing that:

.. national institutions should conform to the (Paris) Principles and be independent, pluralistic and based on universal human rights standards and should be established following an appropriate and inclusive process of consultation.

To conform with the Paris Principles, a national institution must be established by legislation or the constitution and thus depends on government action. However, the establishment of a national institution cannot simply be an action reserved to government. Like any good legislation, it should reflect, through broad consultation, the will of the people and the aim of strengthening society.

There is, of course, great diversity in the circumstances of the countries of the Asia Pacific region in terms of size, stage of development, culture, legal systems and so on. Nevertheless, the Paris Principles set out minimum and universal standards. These standards should not only be observed in the mandate, structure and procedures of a national institution, but should also be reflected in the processes that lead up to its establishment. In addition, any process of establishing a national institution should take full account of international practice with regard to cooperation with civil society. The Vienna Declaration and Programme of Action^{1[1]} recognised:

.. the important role of non-governmental organizations in the promotion of all human rights ... at national, regional and international levels.

It went on to say that:

While recognizing that the primary responsibility for standard-setting lies with States, the (World) Conference also appreciates the contribution of non-governmental organizations to this process. In this respect, the World Conference on Human Rights emphasizes the importance of continued dialogue and cooperation between Governments and non-governmental organizations.

These guidelines have been drafted in the spirit of these fundamental documents. For reference, the Paris Principles are attached. In any work on the establishment of national institutions, reference should also be made to the publication of the Office of the United Nations High Commissioner for Human Rights entitled *National Human Rights Institutions – A Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights*.

^{1[1]} In Section I, paragraph 38.

DRAFT PROPOSAL

GUIDELINES FOR THE PROCESS OF ESTABLISHING NATIONAL INSTITUTIONS IN ACCORDANCE WITH THE PARIS PRINCIPLES

1. The establishment of a national human rights institution should be considered as an important national endeavour. The process of developing the institution, its establishment and implementation should be treated with the same level of seriousness accorded to other major national activities.
2. The initial stimulus to create a national institution may come from Government, from civil society or as a result of international cooperation. Whatever the initial stimulus, the process should be inclusive from the outset.
3. Participation in the establishment phase of the national institution should include:
 - Key figures in Government, including the Head of Government and responsible ministers,
 - Representatives of major political parties,
 - Parliamentarians, particularly where there are parliamentary Human Rights Committees,
 - Relevant government agencies,
 - Human rights NGOs, including specialised organizations such as NGOs focusing on the rights of women & children and with social issues such as health, housing, education and so on,
 - Members of the judiciary and jurists,
 - Trade unions and professional groups, including associations of teachers, lawyers, journalists and so on,
 - Human rights experts and academics.
4. At the request of a State, it may be appropriate for representatives of the Asia Pacific Forum and the United Nations to jointly participate in this preparatory phase in an advisory capacity. This might be within the framework of a technical cooperation program.
5. A government agency should be appointed by the Government as the focal point for work toward the establishment of a national institution. This focal agency would have the responsibility of developing proposals in consultation with stakeholders, making logistic arrangements, coordinating resources and disseminating information.
6. Government should allocate sufficient resources to ensure that an effective consultation process can take place.
7. The focal agency should organise initial consultations within Government and between Government and civil society.
8. There should be wide dissemination of the intention to develop the plan within relevant agencies of government and major interested groups, such as NGOs, political parties, the judiciary, academic and educational institutions.
9. An initial national consultative meeting or series of meetings should be organized to obtain input from the various interested groups. This meeting or meetings would discuss the concept of the national institution and fill out the detail of the process of moving it toward establishment.
10. Given the large number of organisations and individuals with an interest in the process, it may be appropriate to establish a Steering Committee, comprised of representatives of relevant government agencies, civil society and other stakeholders. The

Steering Committee should be chaired at a senior level to oversee the process of consultation leading toward the establishment of the national institution.

11. The Steering Committee should gather information on desirable models of national human rights institutions, including from the Office of the United Nations High Commissioner for Human Rights and from the Asia Pacific Forum, as well as other countries.

12. Effective use of the media could be made in obtaining the views of members of the public. This is particularly important in large and geographically dispersed countries. Use should be made of the internet, radio and television to disseminate information about the proposed national institution and to obtain input from the public.

13. The Steering Committee and/or Focal Agency should arrange public meetings in order to provide opportunities for non-governmental organisations and for members of the public to put their views. Where appropriate, for example in the context of parliamentary human rights committees, public hearings should be held.

14. The consultation process should address

- The human rights situation of the country concerned, which will help define the scope of the proposed institution;
- The mandate of the national institution. This should encompass issues foreshadowed in the Paris Principles and cover the tasks of advising Government, investigating allegations of human rights violations and education and human rights promotion;
- Measures to ensure independence;
- Measures to ensure pluralism;
- The structure of the national institution, including staffing and geographical accessibility;
- Methods of appointing commissioners that are open, consultative and which provide for the necessary qualities of competence, integrity, independence and pluralism;
- Adequate resources for the national institution;
- Cooperation between the national institution and non-governmental organisations;
- Accountability mechanisms;

15. In the light of the overall consultation process, the Steering Committee should prepare recommendations to Government as to the most appropriate mandate, structure of the national institution as well as the appropriate level of resources.

16. The Government should then proceed to draft appropriate legislation and to respond with proposals for necessary administrative mechanisms to ensure the effective functioning of the national institution.

17. The draft legislation and administrative proposals should be the subject of further consultation with civil society and other interested parties.

18. When the legislation has been passed by Parliament, commissioners should be appointed in accordance with the methods agreed in the consultation process.

19. Staff should be appointed on the basis of open and competitive selection processes, in which merit is the sole criterion. Regard should be given to ensuring pluralism within the overall staff make-up of the institution.

20. Adequate resources should be provided for the effective functioning of the national institution.

21. One of the earliest actions of the national institution should be to develop a strategic plan for its operations.

22. The national institution should develop, where appropriate, a plan for technical cooperation that will ensure that its operations are conducted at a high level of efficiency and effectiveness, in accordance with international best practice.
