



Asia Pacific Forum of National Human Rights Institutions

"A Partnership For Human Rights In The Region"

Draft Proposed Resolutions

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The Asia Pacific Forum of National Human Rights Institutions

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PURPOSE

The purpose of this document is to present a series of draft resolutions for the consideration and adoption by Forum members. The draft resolutions are related to (i) the adoption of the draft constitution and (ii) implementing the main provisions contained in the draft constitution.

The draft resolutions cover a range of administrative and policy issues including the:

- adoption of the constitution,
- appointment of Forum councillors,
- election (and rotation) of the Chairperson,
- election of two Deputy Chairpersons
- establishment of two committees of the Council dealing with membership and management issues
- establishment of two Advisory Committees – one for the Advisory Council of Jurists and the other for an Expert Advisory Council,
- appointment of a Secretary;
- approval of a registered office; and
- appointment of an Attorney for the Forum and the granting of authority to act.

PROPOSED DRAFT RESOLUTIONS

The working group recommends that the following draft resolutions be adopted by Forum members.

RESOLUTION 1 – ADOPTION OF THE CONSTITUTION

- That the members of the Forum adopt the constitution and that one duly authorised representative from each Forum member sign the constitution.
- That the members of the Forum request that the Forum begin operations under the new constitution effective from 31 January 2002.

RESOLUTION 2 – APPOINTMENT OF FORUM COUNCILLORS

- That each member of the Forum, as per rule 14.1, nominate one Forum councillor to the Forum Council (subject to mandatory Rule 14.1(e) of the Corporations Act which requires two councillors to be resident in Australia. The Australian Human Rights and Equal Opportunity Commission will therefore nominate two councillors – one of whom will be a non-voting councillor as per rule 14.17).

RESOLUTION 3 – APPOINTMENT OF AGENT AND INCORPORATION

- That the members of the Forum, as per rule 14.5(e)(1), appoint the firm “Freehills”, of 101 Collins St, Melbourne, Victoria, Australia, to do all that is necessary for the legal incorporation of the Forum.

- That the nominated Forum councillors provide their authority for Freehills to act on their behalf.

RESOLUTION 4 – ELECTION OF A CHAIRPERSON

- That the members of the Forum, as per rule 14.10, elect one of the Forum councillors to be the Chairperson of the Forum.

It is recommended that the term of office of the appointment be limited to a period of one year and that the position rotate among all the full members of the Forum Council. The nomination and election process will obviously need to be determined by the members of the Forum.

RESOLUTION 5 – ELECTION OF DEPUTY CHAIRPERSONS

- That the members of the Forum, as per rule 14.11, elect two of the Forum councillors to be Deputy Chairpersons of the Forum.

It is recommended that the term of office of the appointment be limited to a period of one year and that the positions rotate among all the full members of the Forum Council. It is further recommended that the first Deputy Chairperson be the Chairperson elect of the Forum Council while the second Deputy Chairperson be the immediate past Chairperson of the Council.

RESOLUTION 6 – COMMITTEES OF COUNCILLORS

- That the members of the Forum, as per rule 14.15, establish the following two committees of Forum councillors:

Name: Membership Committee

Composition: Recommend that the committee be comprised of three Councillors. The representatives to be determined by the full Council.

Functions: The Committee will examine applications for membership, compliance with the Paris Principles, the category of membership and expulsion from membership.

Name: Management Committee

Composition: Recommend that the committee be comprised of three Councillors. The representatives to be determined by the full Council.

Functions: The Committee will oversee the management of the Forum.

RESOLUTION 7 – ADVISORY COMMITTEES

- That the members of the Forum, as per rule 16, establish the following two Advisory Committees:

Name: Advisory Council of Jurists

Composition: Each full member of the Forum will be entitled to appoint one member to the Advisory Council of Jurists. The initial composition will comprise of:

- Sir Ronald Wilson (nominated by the Australian Human Rights and Equal Opportunity Commission)
- Ratu Joni Madraiwiwi (nominated by the Fiji Human Rights Commission)
- Mr F.S. Nariman (nominated by the Indian Human Rights Commission)
- Professor J.E. Saheptapy (nominated by the Indonesian Human Rights Commission)
- Mr Daman Nath Dhungana (nominated by the Nepalese Human Rights Commission)
- XXXXXX (to be nominated by the New Zealand Human Rights Commission)
- Mr Sedfrey Ordonez (nominated by the Philippines Human Rights Commission)
- Mr R.K.W. Goonesekere (nominated by the Sri Lankan Human Rights Commission)

Functions: The functions of the Advisory Council of Jurists were agreed to by Forum members at the Third Annual Meeting of the Forum, held from 7 to 9 September 1998, in Jakarta, Indonesia. These are as follows:

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.

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 full 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 full member of the Forum.

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.

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 full 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.

Name: Expert Advisory Council

Composition: To be determined by the Chairperson

Functions: The functions of the Expert Advisory Council are to provide advice to the Councillors on any issue concerning the work of the Forum or specific issues referred to them by the Councillors.

It is proposed that the 'Expert Advisory Council' be established in order for the Forum to formally liaise with individuals possessing considerable expertise in their respective fields. It is envisaged that the expertise of the members of this advisory committee would be broader than international human rights law and may include, for example, financial and managerial expertise. The purpose of the advisory committee is to provide advice to the Council for its consideration.

RESOLUTION 8 – APPOINTMENT OF SECRETARY

- That the members of the Forum, as per rule 15.2(a), appoint Mr Kieren Fitzpatrick, as Secretary of the Forum.

RESOLUTION 9 – REGISTERED ADDRESS

- That the members of the Forum authorise that the registered address of the Forum be Level 8, 133 Castlereagh Street, Sydney, NSW, 2000, Australia.