

SEVENTH ANNUAL MEETING



THE ASIA PACIFIC FORUM OF NATIONAL HUMAN RIGHTS INSTITUTIONS

... a partnership for human rights in our region

APPLICATIONS FOR FULL MEMBERSHIP

1. **National Human Rights Commission of Thailand**
2. **National Human Rights Commission of Malaysia**
3. **National Human Rights Commission of Korea**

**11 – 13 November 2002
New Delhi, India**

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1. PURPOSE

The Asia Pacific Forum of National Human Rights Institutions (the Forum) has received applications for full membership from the national human rights institutions of Malaysia, Korea and Thailand. This paper has been prepared by the secretariat to assist Forum Councillors in their consideration of these applications for membership.

2. BACKGROUND

Rule 11 of the constitution of the Forum details the procedure for applications for membership.¹ In summary, the constitution provides for three categories of membership of the Forum.

- (i) In the first category, *Full Members* of the Forum shall be national institutions which, in the opinion of the Forum councillors, meet the UN General Assembly endorsed *Principles relating to the Status of National Institutions* (more commonly known as the ‘Paris Principles’).²
- (ii) The second category of *Candidate Members* relates to those institutions which apply for membership and which can theoretically comply with the Paris Principles, but currently do not do so.

Admission as a candidate member requires a commitment from the institution that active steps will be taken to meet the Paris Principles. A candidate member can become a full member of the Forum by applying for membership once it complies with the Paris Principles.³

- (iii) The third category of *Associate Members* relates to those institutions which do not comply with the Paris Principles and are unlikely to do so within a reasonable period.⁴

All decisions on membership – whether a decision to admit or reject new full members, candidate members or associate members – rests with the Forum councillors.⁵ Forum Councillors need not give any reason for rejecting an application.⁶ In addition Forum

¹ Rule 11.1, Constitution of the Asia Pacific Forum of National Human Rights Institutions, www.asiapacificforum.net. See also Appendix 1 of this paper.

² For the text of the Paris Principles see the UN General Assembly Resolution A/RES/48/134 of 20 December 1993 which can be located at www.nhri.net/GApdf.htm. See also Appendix 2 of this paper.

³ Rule 11.2, Constitution of the Asia Pacific Forum of National Human Rights Institutions

⁴ Rule 11.3. See also a separate paper on the issue of associate membership prepared for the consideration of Forum Councillors at the Seventh Annual Meeting of the Forum.

⁵ See Rules 11.1(d)(1); 11.2(f)(1) and 11.3(i)(1)

⁶ See Rules 11.1(d)(3); 11.2(f)(3) and 11.3(i)(3)

Councillors may, at their discretion, defer consideration of an application for membership till the next meeting of the Council.⁷

The rules of the Forum Constitution also provide for a review of a member institutions' compliance with the Paris Principles⁸ (and hence the possibility that a member institution may move between categories – for example between candidate and full member status).⁹

Finally rule 12 of the Constitution provides for the resignation¹⁰ and expulsion¹¹ of a member institution.

The Forum has adopted the procedure established by the International Coordinating Committee for National Institutions.¹² In applying to become a member of the Forum an institution is required to submit the following:

- A completed 'Accreditation' checklist and relevant supplementary information
- A copy of the institutions founding legislation/constitution
- An organisation chart
- Budgetary information
- Background information on the Commissioners, and
- An annual report (if available).

With regard to the 'Application for Membership Nomination Form'¹³ the secretariat has adopted a procedure where it accepts nomination forms without the applicant having to secure a proposer and seconder. The secretariat then requests the Forum Chairperson and one deputy chairperson to act as the proposer and seconder for the purposes of enabling the application to be considered. In such situations acting as a proposer or seconder does not, therefore, indicate support for the application.

The secretariat of the Forum undertakes the initial evaluation of the application. This often involves the secretariat requesting supplementary information from the applicant. The secretariat then prepares an analysis of the application for the consideration of Forum Councillors. The secretariat provides a copy of this analysis to the applicant for comment prior to its consideration by Forum Councillors. Any comments by the applicant are also provided to the Councillors.

The three applications for full membership from Thailand, Malaysia and Korea are addressed individually below:

⁷ Id

⁸ Rule 11.4

⁹ Rule 11.5

¹⁰ Rule 12.1

¹¹ Rule 12.2

¹² A copy of the APF's membership application form is located at Appendix 3. These forms are based on the application process approved by the International Coordinating Committee of National Human Rights Institutions.

¹³ See Appendix 3.

3. NATIONAL HUMAN RIGHTS COMMISSION OF THAILAND

3.1 Background

The National Human Rights Commission of Thailand initially applied for membership of the Forum in September 2001 when Forum members considered an application at the Sixth Annual Meeting in Colombo, Sri Lanka.

The application was not processed at the Sixth Annual Meeting due to supplementary information on one issue not being available. Specifically, the application for membership indicated that the Thai Commission did not have 'legal and operational autonomy'. The secretariat's review of the application stated:

Under the 'Independence' section of the accreditation checklist the Commission has ticked the 'No' box against the criteria on 'Legal and operational autonomy through separate legislation, infrastructure, staff and resources'. No further information is provided on this topic. A review of the legislation indicates that a significant amount of legal and operational autonomy has been provided to the Commission. A covering letter addressed to the United Nations and copied to the Secretariat indicates, however, that the main infrastructure of the Commission is not yet fully operational and the government has yet to provide approved funds for its operation. The Secretariat recommends that Forum members request further information from the representative of the Thai Commission present at the annual meeting on these issues.¹⁴

It was hoped that these issues could be taken up with the Commission's representative directly at the Sixth Annual Meeting. Unfortunately the Commission's representative was not able to attend the meeting. Forum members therefore resolved to defer the application and requested the Secretariat write to the Thai Commission to seek further information on the Commission's legal and operational independence and to invite the Commission to re-submit an application for membership following the legal incorporation of the Forum.

Following the legal incorporation of the Forum the secretariat wrote to the Commission in line with the decision of Forum members. The Thai Commission provided additional information and resubmitted its application for full membership of the Forum. The re-submitted application form follows the procedure established at the International Coordinating Committee of National Institutions (attached).

3.2 Analysis

Sections 199 and 200 of the Constitution of Thailand B.E. 2540 (1997) allow for the establishment of a National Human Rights Commission. The Constitution directed the National Assembly of Thailand to pass legislation establishing the Commission within two years. The *National Human Rights Commission Act*, B.E. 2542 was adopted by the

¹⁴ Sixth Annual Meeting of the Asia Pacific Forum papers, membership applications, www.asiapacificforum.net

National Assembly of Thailand on 6 October 1999 and subsequently proclaimed by His Majesty King Bhumibol Adulyadej. The Act came into effect on 25 November 1999.

The Commission is comprised of a President and ten other members. These individuals are nominated through a wide-ranging consultative process involving representatives from a variety of judicial, educational and civil society sectors. Following this process the members are finally elected by the Thai Senate. The members of the Commission elect the President of the Commission from amongst themselves. Background information on the President and Commissioners is attached.

Full membership of the Forum is premised on a national institution complying with the Paris Principles.

In determining the compliance of the Commission with the Paris Principles, the following information has been submitted by the Commission and is attached with this paper.

- Accreditation checklist (the application form)
- *National Human Rights Commission Act* B.E. 2542 (1999)
- Organisational chart of the Commission
- Financial information
- Background information on Commissioners.

A review of this material by the Forum Secretariat indicates that the National Human Rights Commission of Thailand is compliant with the *Paris Principles* and is therefore eligible for full membership of the Forum.

3.3 Recommendation

In the opinion of the Forum Secretariat the National Human Rights Commission of Thailand complies with the Paris Principles.

It is therefore recommended that Forum members at the 7th Annual Meeting of the Forum:

- Approve the application for the National Human Rights Commission of Thailand to become a full member of the Asia Pacific Forum of National Human Rights Institutions in accordance with the admission process as set out in rule 11.1 of the Forum's constitution.

4. NATIONAL HUMAN RIGHTS COMMISSION OF MALAYSIA

4.1 Background

The National Human Rights Commission of Malaysia initially applied for full membership in February 2002.

The secretariat made an analysis of this application and recommended full membership. This analysis was sent to all Forum Councillors for review (see attached). The covering correspondence sent by the secretariat to the Forum Councillors stated that if all Forum Councillors were of the same view concerning the application for membership then it could be processed immediately. If, however, Forum Councillors held differing views then the secretariat proposed that the application be deferred until it could be discussed at the next meeting of the Council (as per the rules of the Forum's constitution).

With regard to the Malaysian Commission's application, the member institutions from Australia, India, New Zealand and Sri Lanka responded and approved the Commission as a full member of the Forum. The member institutions from Indonesia, Nepal and the Philippines did not respond. The Fiji Human Rights Commission requested further discussion concerning the application.

In April 2002 Forum Councillors met in Geneva to discuss the application for membership. Representatives from the Malaysian Commission were present at this meeting and answered a number of questions concerning the Commission's structure and operation.

Forum Councillors decided that if any Forum Councillor had particular concerns or issues that they wished clarified then these should be submitted in writing to the secretariat which would then provide them to the Malaysian Commission for their written response. Any concerns and the Malaysian Commission's response would then be circulated to all Forum Councillors for their consideration. The application for membership would then be discussed at the next meeting of the Forum Council to be held in conjunction with the Seventh Annual Meeting of the Forum. The minutes of the meeting in Geneva, detailing the above decision, were circulated to all Forum Councillors (and the Malaysian Commission) in May 2002.

4.2 Fiji Human Rights Commission concerns

In line with the above process on 4 September 2002 the secretariat received correspondence from the Fiji Human Rights Commission concerning the Malaysian Commission's application for membership of the Forum. A copy of this correspondence is reproduced in full below:

These key articles of the United Nations Human Rights instruments are not mere words; national human rights institutions established under the Paris Principles have been vested with the responsibility and competence to promote and protect the right to equality, and other rights. The right to equality in international law emerged precisely because of the horrors of World War II where a certain ethnic group's right to equality had been so severely violated.

Indeed the Fiji Human Rights Commission has committed itself to defending the right to equality before the law (and the consequent right to be free from unfair discrimination) as a fundamental and non-derogable human right.

We recently succeeded in a case in the High Court on the right of every citizen in Fiji to equality before the law, as expressed in our Constitution. The Commission continues to review and assess government policies from the basic premise that everyone in Fiji is equal. The only exception to this is when special programmes or policies are put in place on the basis of disadvantage; that is, when a person or group is denied the right to equality because of a deliberate policy of discrimination in the past (or ongoing) which has affected their access to equal opportunity. However, an analysis of the historical and contemporary circumstances facing that disadvantaged group must be provided by the government invoking the special right. The right of every individual to equality is not undermined by special rights provisions, but enhanced.

Many Constitutions, like ours in Fiji, go further and expressly provide grounds on which discrimination is not permitted. For example, section 38 of the Fiji Constitution states:

- (1) Every person has the right to equality before the law*
- (2) A person must not be unfairly discriminated against, directly or indirectly, on the grounds of his or her (a) actual or supposed personal characteristics or circumstances, including race, ethnic origin, colour, place of origin, gender, sexual orientation, birth, primary language, economic status, age or disability and (b) opinions or beliefs, except to the extent that those opinions or beliefs involve harm to others or the diminution of the rights or freedoms of others; or of any other ground prohibited by this Constitution.*

Obviously, not every constitution of the world would contain exactly these grounds. However, I would be very surprised to find any Constitution or Bill of Rights Act which permits unfair discrimination on the grounds of sex, gender, ethnicity, race or language. There would be no purpose at all in having a Bill of Rights law which discriminates unfairly on the ground of sex/gender or ethnicity/race/language, since the very foundation of human rights law is the concept of non-discrimination and equality.

As national institutions committed to protecting and promoting human rights, we are obliged by international law and national constitutions to defend every person's right to equality before the law and non-discrimination. Yet we know that governments are capable of putting into place policies and legislation undermining the basic human rights principle of equality.

In reviewing a particular national institution's application for APF accreditation, it is important that we examine that national institution's policy on equality. If there is no attempt by the national institution to assist its government to respect international human rights law on equality and non-discrimination or to question any breaches, then **Recommendation A. 1.** of the Paris Principles has not been complied with, and until it does, that applicant should not be accorded full membership of the APF. It is not sufficient for a national institution to state as justification that the 'right to equality' is not a priority of the Commission. The right to equality ought to be a priority for all national institutions because it is the basic right from which all other rights are derived. Without equal rights, the human right to dignity is compromised.

B. Composition and Guarantees of Independence and Pluralism

Recommendation B. 1. of the Paris Principles "Composition and Guarantees of Independence and Pluralism" states that the composition of the national institution should be pluralistic (representing the social forces of civilian society involved in protection and promotion of human rights), including representatives of NGOs, trends in philosophical and religious thought, universities and qualified experts, parliament, and government departments (in an advisory capacity only). There is no provision for representatives from the private sector, such as companies or corporations. This is possibly because a conflict of interest may emerge if there is a human rights complaint about the actions of a private company in, say logging or mining, or deforestation, if one of the commissioners is a director of a private company involved in these activities or an associate. These matters go to the heart of economic, social and cultural rights. Indeed, the independence of a national institution is based on the independence of its members in terms of both the private sector and the government.

Apropos of the above issues raised, I would ask that the application of the Malaysian Human Rights Commission (or any other Commission) for APF accreditation be considered in terms of the following questions:

1. What is the Commission's position on equality and the right to be free from unfair discrimination? (Per **Recommendation A. 1.** of the Paris Principles)
2. Is the composition of the Commission in compliance with **Recommendation B . 1.** of the Paris Principles?

As recognised by international human rights law (such as Articles 1(4) and 2(2) of the International Convention on the Elimination of All Forms of Racial Discrimination) and as acknowledged by the Fiji Human Rights Commission, national policies based on affirmative action are accepted as a rational means to address existing inequalities amongst different groups, whether identified by ethnicity or other, as a consequence of past policies so long as it is time limited or until those inequalities are adequately addressed. This is the case in Malaysia.

Question 2:

Is the composition of the Commission in compliance with Recommendation B.1. of the Paris Principles?

Response:

Members of the Human Rights Commission of Malaysia are reflective of the pluralistic make-up of Malaysia's society representing various ethnic and religious groups, men and women, and numerous fields of expertise.

Insofar as the issue of conflict of interest is concerned, just as a judge would recuse him or herself from presiding over a case which (may) involve his or her personal interest(s), so would a member of the Commission declare his or her personal interest(s) in a particular matter at hand and be excused from any discussion or decision related to that matter.

4.4 Recommendation

Forum Councillors will need to consider the above concerns of the Fiji Human Rights Commission and the response of the Malaysian Human Rights Commission in the determination of the application for full membership.

5. HUMAN RIGHTS COMMISSION OF KOREA

5.1 Background

The *National Human Rights Commission Act* was passed on 24 May 2001, establishing the National Human Rights Commission on 25 November 2001.

The National Human Rights Commission of Korea is comprised of eleven commissioners including one president of the Commission and three senior commissioners. Responsibility for the nomination and selection of commissioners is shared between the President of the Republic of Korea, the National Assembly and the Chief Justice of the Supreme Court. It is a requirement that a minimum of four commissioners shall be women. The president of the Commission is appointed by the President of the Republic of Korea. The terms of the commissioners are three years and consecutive appointments may be extended for one additional term only.

The National Human Rights Commission of Korea has applied for full membership of the Asia Pacific Forum of National Human Rights Institutions. The application form follows the procedure established at the International Coordinating Committee of National Institutions (attached).

5.2 Analysis

Membership of the Forum is premised on a national institution complying with the 'Paris Principles'.

In determining the compliance of the Commission with the Paris Principles, the following information has been submitted and is attached with this paper.

- Accreditation checklist (the application form)
- *National Human Rights Commission Act* (Act No. 6481) 2001
- A document providing an overview of the powers, functions and structure of the Commission
- Organisational chart of the Commission
- Dates of Commission meetings
- Budget for 2002, and
- President and Commissioner profiles.

A review of this material by the Forum Secretariat raises a number of issues under the following sections of the accreditation checklist:

Pluralism

1. With regard to the question of 'pluralism' the Paris Principles state that:

“The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:

- (a) Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;
- (b) Trends in philosophical or religious thought;
- (c) Universities and qualified experts;
- (d) Parliament;
- (e) Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).”

Article 5 of the National Human Rights Commission Act 2001 is as follows:

Article 5 – Organization of Commission

- (1) The Commission shall be comprised of eleven commissioners for human rights (hereinafter referred to as a ‘commission’) including one president and three full-time commissioners.
- (2) Four persons selected by the National Assembly (including two full-time commissioners), four persons nominated by the President of the Republic of Korea, and three persons nominated by the Chief Justice of the Supreme Court, from among those persons who have professional knowledge and experience on the matters of human rights and are recognized to be capable of performing duties of human rights protection and promotion fairly and independently, shall be appointed by the President of the Republic of Korea to be commissioners.
- (3) The President of the Commission shall be appointed by the President of the Republic of Korea from among the commissioners.
- (4) The president and full-time commissioners of the Commission shall be appointed as public officials in political service.
- (5) Four or more of the commissioners shall be women.
- (6) In case the term of office of a commissioner expires, he/she shall continuously perform his/her duties until his/her successor is appointed.

In its application to the Forum the Commission states that:

“... article 5 of [the] National Human Rights Commission Act does not guarantee a pluralist composition and thus a more detailed article is required to guarantee a pluralist composition.”

The Secretariat wrote to the Commission requesting further information on this point. In response the Commission stated that while the composition of their Commission clearly demonstrated a commitment to pluralism the legislation governing appointments to the Commission did not guarantee it. An amendment to the Act would be required if it was deemed necessary to specifically articulate that Commissioners should come from various different areas of expertise.

It should be noted that the issue of pluralism in the Paris Principles is not exclusively restricted to the appointment process of Commissioners but rather to the broader issue of the overall composition and operation of a national institution. For example the Paris Principles specifically cite that one of the ‘*necessary guarantees*’ to ensure pluralism is a

power “*which will enable effective cooperation to be established with, or through the presence of, representatives*” from broader civil society. On this point the Secretariat asked whether the Commission had the power to establish an ‘advisory committee’ comprised of members of civil society. In response the Commission stated that:

Article 15(1) of the NHRC Act writes, ‘The Commission may establish an advisory organ in order to ask advice on matters which are necessary for the performance of its duties’ and Article 15(2) writes, ‘Necessary matters concerning the organization and operation of the advisory organ shall be prescribed by the rule of the Commission.’ Thus, the Commission may establish an advisory committee comprised of members of civil society.

At this time, to ensure that the civil society may advise in different areas, the Commission is moving forward with a plan to establish a ‘National Human Rights Commission Advisory Committee Regulations.’

The Secretariat is of the view that the provisions of Article 5 in association with the powers provided in Article 15 of the Act (and the Commission’s stated intention of forming an appropriate advisory committee) meet the Paris Principles requirement for pluralism.

Independence

2. With regard to the question of ‘legal and operational autonomy through separate legislation, infrastructure, staff and resources’ the Commission states that:

“...in the process of structuring and organizing the Secretariat and deciding the mandate of the Commission, there has been some intervention of the Ministry of Governmental Administration and Home Affairs and the Ministry of Justice.”

The Secretariat wrote to the Commission requesting further information on this point to clarify the nature of the intervention of the government departments in the operations of the Commission. In response, the Commission replied that:

“... during the process of outlining the organization of the office, there were – as regulated by the Law on Governmental Organs – consultations with the Ministry of Governmental Administration and Home Affairs (MGAHA). Regarding certain issues of organization and selection of staff, the NHRC must still consult with MGAHA.

Regarding the Ministry of Justice (MJ), at the initial stage of NHRC, the MJ tried to assign the NHRC under its wing, but failed to do so, whereby the NHRC became an independent national institution. There were also conflicts with the MJ regarding the complaint procedure and investigative process.

However, it must be stressed that such problems were the result of conflicting interests during the inception of NHRC, and nevertheless, [the] Commission continues to work hard to ensure – both in its management and in its legal status – its independence.”

In response to the above, the Secretariat sought further supplementary information from the Commission concerning (i) the Law on Governmental Organs and (ii) an explanation of the types of issues the Commission must consult the MGAHA on and the role of the MGAHA in the selection of staff.

With regard to the Law on Governmental Organs the Commission replied that:

The Law on Governmental Organs states – ‘Article 1: The purpose of this law is to systemize and facilitate national administrative affairs, by outlining the establishment and organization of the national administrative institutions.’

Furthermore, Article 3(1) of the NHRC Act reads, “NHRC shall be established to deal with affairs for the protection and promotion of human rights under this Act,” and Article 3(2) reads, “The Commission independently deals with matters which fall under its jurisdiction.”

Thus, in regards to the operation of NHRC, the independence of the Commission is secured.

With regard to consultation with the MGAHA the Commission replied that:

According to the National Human Rights Commission Act,

- Article 16(3) reads, “Public officials in Grade V or higher from among the staff belonging to the Secretariat shall be appointed by the President of the Republic of Korea ... and those in Grade VI or lower shall be appointed by the President of the Commission.”
- Article 18 reads, “...matters necessary for the organization of the Commission shall be prescribed by the Presidential Decree and those necessary for its operation shall be prescribed by the rule of the Commission.”

According to the Law on Governmental Organization,

- Article 33(1) states: “Minister of Government Administration and Home Affairs is in charge of ... organization of governmental institutions and number of staff ... affairs pertaining to promulgation of decrees and treaties, personal management ...”

In regards to the selection of staff members,

- those in Grade VI or lower are independently selected by the NHRC, and for the selection of those in Grade V or higher, NHRC consults with MGAHA.
- However, even in such cases, public announcement for appointment, interview, and selection are all carried out independently by the Commission, and MGAHA only reviews whether those selected qualifies to the objective standard as outlined in related laws. Thus, MGAHA can be in no way deemed as intervening the NHRC’s right of personnel management.

In regards to the organization,

MGAHA regulates the organization in order to prevent national institutions from having too many higher level staffs, and unnecessary increase in the number of personnel.

If and when a national institution plans to increase the number of its staff, the institutions are required to consult with MGAHA, and thus the NHRC must do the same as with any other national institutions.

Administrative restrictions placed upon the operation of national human rights institutions are not uncommon. Many Forum member institutions have restrictions placed upon them by their governments, for example, in the administration and expenditure of public funds. Similarly, many Forum members also need to follow governmental requirements regarding the employment of staff. Often these have been designed to ensure equal opportunity and non-discrimination.

While it may be argued that the independence of a national human rights institution is strengthened when there are no administrative regulations placed upon it – Forum

members have previously stated that it is not the existence or otherwise of administrative restrictions but rather whether these restrictions place an undue burden on the Commission's ability to perform its role independently.

In discussions with the South Korean Commission the secretariat have been advised that the above administrative restrictions with regard to the employment of staff and the organisation of the Commission apply to all government and quasi-governmental organisations in South Korea. The Commission is therefore under no greater obligation than other administrative agencies. Given this fact – and when it is viewed in conjunction with Article 3(2) of the NHRC Act which states that the “Commission deals independently with matters which fall under its jurisdiction” – the secretariat is of the view that the Commission has sufficient legal and operational autonomy to meet the Paris Principles.

Method of Operation

3. With regard to the question of whether the Commission is free to ‘establish local and regional sections’ the Commission indicated that it was not free to do so but went on to state that “it is necessary to establish regional office[s].” The Secretariat wrote to the Commission seeking further information on this issue. In response, the Commission stated:

“Most of the complaints made to the NHRC comprise of these complaints by detainees in regional detention facilities. Also, being that most of the petitioners also live outside of Seoul, the Commission has faced difficulties in prompt investigation and correspondence.

Thus, to mitigate the problem, to secure the petitioner's right for access, and to keep guard of the regional human rights violations, NHRC finds the need to establish regional offices.

They could also play a crucial role in building an organic relationship between regional administrative organs, press and private companies, and organizations, whereby contributing to the proliferation of human rights-oriented thinking in the entire nation and establishment of educational/advocacy infrastructure.

However, since the establishment of the regional offices is an issue ... regulated by the MGAHA, the NHRC must consult with it.”

The Secretariat requested supplementary information on the process of consultation with the MGAHA. In response the Commission stated that:

The establishment of regional offices is ... regulated by the Law on Governmental Organs, and thus the NHRC must consult with the MGAHA.

The Commission is aiming at establishing regional offices, and we are at the stage of gathering relevant information. However, we have not begun the consultation process with the MGAHA.

The above administrative restriction on the establishment of a regional office may not be inconsistent with the Paris Principles. The Paris Principles require that, within the framework of its operation, a national institution shall “*establish working groups from among its members as necessary, and set up local or regional sections to assist it in*

discharging its functions.” This requirement suggests two relevant factors need to be taken into account. The first is that the decision to establish a working group or a local/regional section is dependent upon an assessment (presumably by the institution itself) of the need to do so – as indicated by the language “as necessary” and “to assist it”. The second factor to consider is what constitutes a local or regional ‘section’. The language used in the Paris Principles suggests something broader than a local or regional ‘office’ and presumably it would cover such initiatives as, for example, the Philippines Commission on Human Rights ‘barangay’ human rights action officers and the Indian Commission’s special rapporteurs.

With regard to the first factor of necessity, the South Korean Commission clearly asserts that it is necessary. With regard to the second factor, Forum Councillors will need to consider whether a legislative requirement placed upon the Commission to consult with the government in the establishment of local or regional offices offends the Paris Principles. Alternatively Forum Councillors may wish to consider whether alternate arrangements – such as the creation of an advisory group which contains local and/or regional representatives (see article 15(1) of the Commission’s legislation) or other operational initiatives that ensure the accessibility of the Commission – would suffice.

A full copy of the Commission’s responses to the above issues is attached.

5.3 Recommendation

Subject to Forum Councillors being satisfied that the administrative restrictions placed upon the South Korean Commission do not place an undue burden on it in the performance of its role, the secretariat recommends that Forum members at the 7th Annual Meeting of the Forum:

- Approve the application for the National Human Rights Commission of Korea to become a full member of the Asia Pacific Forum of National Human Rights Institutions in accordance with the admission process as set out in rule 11.1 of the Forum’s constitution.

7. APPENDIX 1 – MEMBERSHIP RULES

CONSTITUTION OF THE ASIA PACIFIC FORUM OF NATIONAL HUMAN RIGHTS INSTITUTIONS

RULES RELATING TO MEMBERSHIP OF THE FORUM

11 Membership

11.1 Full members

(a) Qualifications of full members

Each full member must be a national human rights institution in the Asia Pacific region which in the opinion of the Forum councillors complies with the Paris Principles.

(b) Initial members

The initial members are:

- (1) Human Rights and Equal Opportunity Commission of Australia;
- (2) National Human Rights Commission of India;
- (3) Indonesian National Commission on Human Rights;
- (4) Human Rights Commission of New Zealand;
- (5) Commission on Human Rights of the Philippines;
- (6) Human Rights Commission of Sri Lanka;
- (7) Fiji Human Rights Commission; and
- (8) Human Rights Commission of Nepal.

(c) Status

The initial members are full members.

(d) Admission of further full members

- (1) The Forum councillors may admit any institution, meeting the qualifications set out in rule 11.1, to full membership of the Forum.
- (2) Every applicant for full membership (except the initial members) must be proposed by one and seconded by another full member. The application for full membership must be:
 - (A) made in writing and signed by the applicant and its proposer and seconder; and
 - (B) in the form prescribed by the Forum councillors.
- (3) Subject to rule 11.1(d)(4), at the next meeting of the Forum councillors after the receipt of an application for membership, the Forum

councillors must consider the application and decide whether to admit or reject the admission of the applicant. The Forum councillors need not give any reason for rejecting an application.

(4) The Forum councillors may, at their discretion, defer the consideration of an application for full membership.

11.2 Candidate members

(e) Qualifications of candidate members

Each candidate member must be a national human rights institution in the Asia Pacific region which in the opinion of the Forum councillors could comply with the Paris Principles within a reasonable period but does not do so at the time of the application for membership and which commits, in a form acceptable to the Forum councillors, to take active steps towards compliance with the Paris Principles within a reasonable period.

(f) Admission of candidate members

(1) The Forum councillors may admit any institution meeting the qualifications set out in rule 11.2(a) to candidate membership of the Forum.

(2) Every applicant for candidate membership must be proposed by one full member and seconded by another full member. The application for candidate membership must be:

- (A) made in writing and signed by the applicant and its proposer and seconder; and
- (B) in the form prescribed by the Forum councillors.

(3) Subject to rule 11.2(b)(4), at the next meeting of the Forum councillors after the receipt of an application for candidate membership, the Forum councillors must consider the application and decide whether to admit or reject the admission of the applicant. The Forum councillors need not give any reason for rejecting an application.

(4) The Forum councillors may, at their discretion, defer the consideration of an application for candidate membership.

(g) Rights of candidate members

Candidate members have no voting rights.

11.3 Associate members

(h) Characteristic of associate members

Each associate member must be a human rights institution in the Asia Pacific region which, in the opinion of the Forum councillors, does not comply with and is unlikely to comply with the Paris Principles within a reasonable period.

(i) Admission of associate members

(1) The Forum councillors may admit any institution, having the characteristic set out in rule 11.3(a), to associate membership of the Forum.

(2) Every applicant for associate membership must be proposed by one full member and seconded by another full member. The application for associate membership must be:

- (A) made in writing and signed by the applicant and its proposer and seconder; and
- (B) in the form prescribed by the Forum councillors.

(3) Subject to rule 11.3(b)(4), at the next meeting of the Forum councillors after the receipt of an application for associate membership, the Forum councillors must consider the application and decide whether to admit or reject the admission of the applicant. The Forum councillors need not give any reason for rejecting an application.

(4) The Forum councillors may, at their discretion, defer the consideration of an application for associate membership.

(j) Rights of associate members

Associate members have no voting rights.

11.4 Review of compliance by full members with the Paris Principles

(k) Occasion for review

(1) The Forum councillors may, on their own motion and at any time, decide to review the compliance of a full member with the Paris Principles.

(2) A full member must notify the Forum if there has been any change to the constitutional and/or legislative base or administration of the institution which materially impacts upon its compliance with, or ability to comply with, the Paris Principles.

(l) Review

(1) Following a decision to review under rule 11.4(a)(1) or receipt of a notification under rule 11.4(a)(2), the Forum councillors must meet to consider whether the institution complies with the Paris Principles.

(2) If the Forum councillors decide that the institution does not so comply, they may decide to propose a resolution under rule 12.2 to expel the member.

11.5 Review of commitment by candidate members to comply with the Paris Principles

(m) Occasion for review

(1) The Forum councillors may, on their own motion and at any time, decide to review the commitment of a candidate member to take active steps to comply with the Paris Principles within a reasonable period.

(2) A candidate member must notify the Forum if there has been any change to the constitutional and/or legislative base or administration of the institution which materially impacts upon its commitment or ability to take those active steps to comply with the Paris Principles within a reasonable period.

(n) Review

(1) Following a decision to review under rule 11.5(a)(1) or receipt of a notification under rule 11.5(a)(2), the Forum councillors must meet to consider whether the institution is taking active steps to comply with the Paris Principles.

(2) If the Forum councillors decide that the institution is not taking those active steps, they may decide to propose a resolution under rule 12.2 to expel the member

12 When membership ceases

12.1 Resignation and other events

An institution immediately ceases to be a member if the institution:

(o) resigns as a member by giving written notice to the Forum; or

(p) becomes insolvent or makes any arrangement or composition with its creditors or if a liquidator, receiver or other external administrator is appointed in respect of the institution; or

(q) is expelled under rule 12.2.

12.2 Expulsion

(r) The Forum councillors may by resolution expel a member from the Forum if;

(1) in their absolute discretion, they decide it is not in the interests of the Forum for the institution to remain a member; or

(2) under rules 11.4(l)(2) or 11.5(n)(2) they decide to propose a resolution under this rule.

(s) If the Forum councillors intend to propose a resolution under rule 12.2(r), at least one month before the meeting at which the resolution is to be proposed, they must give the member written notice:

(1) stating the date, place and time of the meeting;

(2) setting out the intended resolution and the grounds on which it is based; and

(3) informing the member, candidate member or associate member that a representative of the member, candidate member or associate member may attend the meeting and may give an oral or written explanation or submission before the resolution is put to the vote.

8. APPENDIX 2 – PARIS PRINCIPLES

PRINCIPLES RELATING TO THE STATUS OF NATIONAL INSTITUTIONS

Competence and responsibilities

'Paris Principles'

1. A national institution shall be vested with competence to promote and protect human rights.
2. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.
3. A national institution shall, inter alia, have the following responsibilities:
 - (a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicize them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:
 - (i) Any legislative or administrative provisions, as well as provisions relating to judicial organizations, intended to preserve and extend the protection of human rights; in that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights; it shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;
 - (ii) Any situation of violation of human rights which it decides to take up;
 - (iii) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;
 - (iv) Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government;
 - (b) To promote and ensure the harmonization of national legislation regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;
 - (c) To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;
 - (d) To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations and, where necessary, to express an opinion on the subject, with due respect for their independence;

- (e) To cooperate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the promotion and protection of human rights;
- (f) To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;
- (g) To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.

Composition and guarantees of independence and pluralism

4. The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:
 - (a) Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;
 - (b) Trends in philosophical or religious thought;
 - (c) Universities and qualified experts;
 - (d) Parliament;
 - (e) Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).
5. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.
6. In order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.

Methods of operation

Within the framework of its operation, the national institution shall:

- (a) Freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner;
- (b) Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;
- (c) Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;

- (d) Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly convened;
- (e) Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions;
- (f) Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular ombudsmen, mediators and similar institutions);
- (g) In view of the fundamental role played by the non-governmental organizations in expanding the work of the national institutions, develop relations with the non-governmental organizations devoted to promoting and protecting human rights, to economic and social development, to combatting racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.

Additional principles concerning the status of commissions with quasi-judicial competence

A national institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organizations, associations of trade unions or any other representative organizations. In such circumstances, and without prejudice to the principles stated above concerning the other powers of the commissions, the functions entrusted to them may be based on the following principles:

- (a) Seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality;
- (b) Informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them;
- (c) Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;
- (d) Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations and administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.

9. APPENDIX 3 – APPLICATION FORM

APPLICATION FOR MEMBERSHIP



Nomination Form

THE ASIA PACIFIC FORUM

APPLICANT		
Organisation Name		
Organisation Address		
Name:	.....	Date
Title:	.....	-- / -- / --
Signature:	.....
PROPOSER		
Organisation Name		
Organisation Address		
Name:	.....	Date
Title:	.....	-- / -- / --
Signature:	.....
SECONDER		
Organisation Name		
Organisation Address		
Name:	.....	Date
Title:	.....	-- / -- / --
Signature:	.....

<p>ACCOUNTABILITY</p> <ul style="list-style-type: none"> • What is the nature of the institution's accountability?: <p>Executive (Prime Minister/Head of State/King, etc.....)</p> <p>Legislative.....</p> <p>Other (specify)</p>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<p>[Indicate line of accountability and how the institution is accountable]</p>	<p>[Provide the relevant provision or other relevant documentation]</p>
<p>PROTECTION & PROMOTION FUNCTIONS</p> <ul style="list-style-type: none"> • Are these functions of protection & promotion specifically defined in law?..... 	<input type="checkbox"/> Yes <input type="checkbox"/> No	<p>[If yes explain where defined and what those functions are, if no, give reasons]</p>	<p>[Provide the relevant section/article or other relevant evidence]</p>
<p>RESPONSIBILITY</p> <ul style="list-style-type: none"> • Does the institution have responsibility to: <p>Submit opinions, reports & recommendations to government/parliament on any matter concerning protection/promotion of human rights and without prior authorization?.....</p> <p>Promote consistency between domestic legislation and international human rights instruments?.....</p> <p>Encourage ratification of such instruments in co-operation with the UN and regional & national institutions?.....</p> <p>Contribute independently of government to UN reporting?.....</p> <p>Conduct research & education programs on human rights?.....</p> <p>Increase public awareness of human rights issues?.....</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No	<p>[In each of these subcategories of responsibility;</p> <p>if yes please provide an indication of where these roles are articulated and expand on them, if no, please describe current responsibilities]</p>	<p>[Please provide evidence of responsibilities preferably through founding document</p> <p>or otherwise as required including reports and recommendations, interactions with government & UN, examples of education programs as well as public relations/media plans]</p>
<p>INDEPENDENCE</p> <ul style="list-style-type: none"> • Is the independence of the institution guaranteed by: 		<p>[Describe how the independence of the institution is guaranteed]</p>	<p>[Provide copies of the relevant provisions or regulations ensuring]</p>

<p>Pluralist composition?.....</p> <p>Appointment & dismissal process established by law with fixed term & renewable?.....</p> <p>Financial autonomy derived from stable, adequate funding?.....</p> <p>Legal & operational autonomy through separate legislation, infrastructure, staff & resources?.....</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No	<p>& the relationships it has with government. If any of these criteria are not currently met, explain why]</p>	<p>independence including membership details, budgetary documentation, location and resourcing information]</p>
<p>METHOD OF OPERATION</p> <p>• Is the institution free to:</p> <p>Meet regularly & as required?.....</p> <p>Review any matter within own jurisdiction on referral from government, by individual complaint or suo moto?.....</p> <p>Hear any person & obtain any information related to a matter within jurisdiction?.....</p> <p>Make public its findings & recommendations (eg through annual report)?.....</p> <p>Establish local & regional sections?.....</p> <p>Maintain consultation with other bodies (eg NGOs) when carrying out its functions?.....</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No	<p>[Describe in detail how the institution operates in relation to its mandate]</p>	<p>[Provide copies of minutes of meetings, provisions relating to powers to obtain information and collect evidence, annual reports and geographical branches]</p>
<p>ADDITIONAL CRITERIA - INSTITUTIONS WITH QUASI-JUDICIAL COMPETENCE</p> <p>• Is the institution competent to:</p>		<p>[Explain in detail any complaint handling</p>	<p>[Provide evidence of quasi-judicial</p>

<p>Potentially hear individual complaints?.....</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No	function of the institution including nature of complaints and methods of resolution]	competence through founding document if applicable. Provide evidence of complaint load & any relevant statistics on volume, type and method & success in resolution.
<p>Potentially seek settlement through conciliation or binding decisions, with confidentiality?.....</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No		Provide any public information
<p>Inform the complainant of their rights & remedies and ensure the process is accessible?.....</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No		document/brochures/contact details ensuring accessibility]
<p>Potentially make recommendations to competent authorities, make enforceable decisions or refer to specialised tribunal?.....</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No		