



**THE ASIA PACIFIC FORUM
OF NATIONAL HUMAN RIGHTS INSTITUTIONS**

...a partnership for human rights in our region

**‘The role of the APF in relation to the application of the
Paris Principles’**

**Conference for Commonwealth National Human Rights
Institutions**

Marlborough House, London, 26-28 February 2007

Presented by Ms Pip Dargan, Deputy Director

I would like to sincerely thank the Commonwealth Secretariat for its invitation to the Asia Pacific Forum of National Human Rights Institutions (APF) to attend and speak at this conference.

The Commonwealth Secretariat has invited the APF to share its perspective on its role as a regional body for national human rights institutions in the Asia Pacific in relation to the application of the Paris Principles.

Why do we need standards such as the Paris Principles?

NHRIs, as relatively new human rights bodies, have become vitally important component in the array of national mechanisms available to states to implement their international human rights obligations at the domestic level. However due to the inherent tension that exists between a government and the NHRI it has become vitally important to ensure that these institutions which are created by states adhere to standards that are internationally recognised and which provide an objective basis to test the integrity, independence and effectiveness of these national institutions. If these standards are not rigorously applied, tested and monitored by the international community then NHRIs are at serious risk losing their credibility as human rights institutions operating with integrity and independence.

International and regional forums or groups of NHRIs like the APF and the International Coordinating Committee of National Human Rights Institutions (ICC) therefore have a vitally important responsibility to ensure that institutions accredited to their organisations meet the highest possible standard. The existing normative framework for setting standards and assessing the independence of NHRIs is the *United Nations Principles Relating to the Status of National Institutions (otherwise known as the Paris Principles)*. Other important supplementary documents to be read along with the *Paris Principles* include the *Commonwealth Secretariat's Best Practice Booklet* and Amnesty International's *National Human Rights Institutions: Amnesty International's Recommendations for Effective Protection and Promotion of Human Rights* (2001).

However it is the *Paris Principles* that hold an important and unique status because they alone have achieved international consensus and endorsement by nation states through the Commission on Human Rights (1992) the United Nations General Assembly (1993) and the 1993 World Conference on Human Rights as the minimum standards for the establishment of independent NHRIs.

Although not legally binding the high-level of international endorsement ensures that the *Paris Principles* are widely accepted as the normative framework for the establishment of independent NHRIs. And as Professor Brian Burdekin makes it clear in his recently published book on NHRIs in the Asia Pacific region, the *Paris Principles* 'were minimum standards prepared...to prevent, or at least discourage, States from establishing "window dressing" institutions designed to placate domestic

critics or impress international donors”.¹ Without doubt and with good reason the *Paris Principles* have been criticised for being non-binding, too flexible and also for being based on the underlying assumption that every NHRI will be established in a democratically functioning state. However as Brian Burdekin observes the *Paris Principles* represented, at the time, the best possible outcome in reaching a consensus given the objective of achieving UN General Assembly endorsement. The *Paris Principles* should therefore be upheld up as minimum standards and not necessarily as best practice.

As all of you are aware the following criteria are regarded as the core components of *Paris Principles*:

- independence guaranteed by statute or constitution;
- autonomy from government;
- pluralism, including in membership;
- a broad mandate based on universal human rights standards;
- accessibility; and
- sufficient resources.

The *Paris Principles* are therefore central to the accreditation process and are used as criteria in assessing membership applications by both the APF and the ICC. The APF plays an important ‘gatekeeper’ role in the region in promoting the minimum standards contained in the *Paris Principles*. For the Asia Pacific Forum the *Paris Principles* are not only central to its accreditation process but they also are inherent to its foundation and operate as a guide to its work. At the first meeting of NHRIs in the Asia Pacific region in 1996 which formed the APF the founding declaration known as the *Larrakia Declaration* proclaimed that it would “... welcome as participants in the forum other independent national institutions established to conform with the *Paris Principles*”.²

The APF

Before I discuss in further detail the application of the *Paris Principles* in relation to the APF’s membership and accreditation process I would like to, in the first instance, provide you a brief summary on the background and work of the APF.

As many of you are aware the Asia Pacific is the only region without a regional inter-governmental human rights mechanism (either in the form of a treaty, commission or court). There is very lively debate on whether or not regional governments will ever agree to such a mechanism. It is within this context, that in 1996, the existing NHRIs of the region met in Darwin, Australia. Importantly, this meeting had the support of several regional governments, regional NGOs and the Office of the High Commissioner for Human Rights. The NHRIs of India, Indonesia, Australia, New Zealand and subsequently the Philippines agreed that they, with important political and financial assistance from the UN and several regional governments, would establish a forum for national institutions that would, in some small way, move towards ‘filling the vacuum’ created by the lack of a regional framework.

¹ Burdekin Brian, *National Human Rights Institutions in the Asia-Pacific region* (2007), Preface xi.

² APF Larrakia Declaration (1996) www.asiapacificforum.net/annual_meetings/first/concluding.htm

It would set out to advance human rights dialogue, support and cooperation within the region through NHRIs. Moreover NHRIs recognized that they themselves commonly lacked human and sometimes financial resources and therefore required training and technical assistance. The APF was in effect primarily established to, where requested, strengthen and promote the development of NHRIs in accordance with the *Paris Principles*. The approach of the APF is to focus on practical outcomes through constructive cooperation and dialogue. Its work can be categorized under three broad areas:

1. Strengthening the capacity of individual APF member institutions to enable them to more effectively undertake their national mandates;
2. Assisting governments and non-governmental organisations to establish national institutions in compliance with the *Paris Principles*; and
3. Promoting regional cooperation on human rights issues.

In 1996 a small secretariat comprising of two staff, working on a part-time basis, were initially seconded from the Australian Human Rights Commission to facilitate this newly created informal regional network.

The APF has now been in operation for close to eleven years. In 2002 the APF formalised its operations and became a legally independent and incorporated not-for-profit company. It has a board of directors which is made up by those member institutions that are fully compliant with the *Paris Principles*, or in ICC terms an 'A' accredited institution. The APF has an organizational constitution and a full-time secretariat with five full-time staff (4 out of the 5 staff have formerly worked for NHRIs in the region) and include the positions of Director, Deputy Director, Project Manager, Project Manager (Regional Training) and Development Manager. The secretariat also receives regular staff placements from member institutions such as the National Human Rights Commission of South Korea. It also receives interns on a regular basis.

The APF has business, strategic and fundraising plans to guide its work and future operations³. When first established in 1996 the APF received a donor grant of AUD 45,000. Today it manages a budget of 2 million Australian dollars annually which is directed towards APF activities. The APF funding base is diverse and member institutions are also required to contribute an annual membership fee. The APF leases rental space for the operation of its secretariat from one of its full member institutions – the Australian Human Rights and Equal Opportunity Commission.

APF tiered-system of membership

As previously mentioned the *Paris Principles* are the key criteria used to assess APF membership applications and is clearly set out in the APF constitution.⁴ Membership categories are determined on whether the institutions are fully, partially or non-compliant with the *Paris Principles*. Subsequently the APF has a three-tiered membership arrangement which includes 'full', 'candidate' and 'associate' categories.

³ www.asiapacificforum.net

⁴ APF Constitution, section 11, p 5:

www.asiapacificforum.net/about/governance/documents/constitution.doc

Full membership

The APF has 13 'full' members, that is, NHRIs which are fully compliant with the *Paris Principles* (under the ICC system these institutions are classified as 'A'). Fully accredited NHRIs in the APF are also referred to as '*Forum Councillors*' and those NHRIs include: Afghanistan, Australia, Fiji, India, Indonesia, Malaysia, Mongolia, Nepal, New Zealand, Philippines, Republic of Korea, Sri Lanka, and Thailand. You will note that 6 (or nearly 50%) of these institutions are from Commonwealth countries (Australia, Fiji, India, Malaysia, New Zealand and Sri Lanka). Under the APF system 'full' member institutions are conferred privileges which include the right to nominate a Forum Councillor to the Forum Council – which is the APF decision-making body - and therefore have a right to vote on decisions and to assess and vote on membership applications; to nominate a jurist to the APF's Advisory Council of Jurists; to host annual meetings; to become the Chair or Deputy Chair of the APF and to access all APF activities, programs and training. Full members contribute a USD 3000 membership fee to the APF annually.

Candidate membership

The APF has two other categories of membership – 'candidate' and 'associate'. These categories are distinct from 'full' membership because these institutions do not comply or fully comply with the *Paris Principles*. Under the APF constitution a 'candidate' member (which is equivalent to the 'B' classification under the ICC system) is a NHRI which *could* comply with the Paris Principles within a reasonable period but does not do so at the time of the application for membership. It therefore commits, in a form acceptable to Forum councillors, to take active steps towards compliance with the *Paris Principles* within a reasonable period.

Currently there is only one institution in the APF that is accredited as a 'candidate' institution and that is the *Provedor for Human Rights and Justice of Timor-Leste*. At the time of the Provedor's application to become a full member of the APF at the 10th annual meeting in 2005, it was evident from the information made available to Forum Councillors that although the institution's legislation was in place and appointments at the commissioner level had recently been made, the staff complement required to implement the Provedor's work program had not yet been employed and consequently the Provedor's office was unable to officially open to the public for a further five months. In the view of the Forum Council the Provedor's office therefore was only partially compliant with the *Paris Principles* because it was not yet vested with the competence, that is, the staff, to promote and protect human rights. However on assessment of the information provided by the Provedor Forum Councillors further determined that it was highly likely that the staff component would be filled imminently and therefore was of the opinion that the Provedor could comply with the Paris Principles within a reasonable period but did not do so at the time of application. At that meeting the Provedor agreed to take active steps towards complying with the *Paris Principles* in terms of its competence and has done so. It is expected that the Provedor will seek a review of its membership status at the APF's 12th annual meeting to be held in September this year.

Under the candidate category those institutions are not able nominate a Forum Councillor to the Forum Council and therefore cannot vote on APF decisions or vote on membership applications; it cannot nominate a jurist to the Advisory Council of Jurists; it cannot host annual meetings or become the Chair or Deputy Chair of the APF. Candidate institutions can however fully participate in all APF activities, programs, attend annual meetings, observe Forum Council sessions, receive training and capacity-building assistance as well as host training workshops. Candidate institutions contribute a USD 1500 membership fee to the APF annually.

Associate membership

The third and final category of membership is 'associate' membership. Under the APF constitution an 'associate' member (which is equivalent to 'C' classification under the ICC system) is an institution which in the opinion for the Forum councillors, does not comply with and is unlikely to comply with the *Paris Principles* within a reasonable period. Currently there are three institutions that are accredited as 'associate' members and they include the *Jordan National Centre for Human Rights*, the *Palestinian Independent Commission for Citizens' Rights* and the *National Human Rights Committee of Qatar*. Associate members contribute a USD 1500 membership fee to the APF annually.

At the APF's 8th annual meeting held in February 2004 the Palestinian Commission applied for full membership to the APF. At that meeting Forum Councillors determined that it lacked proper enabling legislation and also raised concern regarding its status as a 'national' institution (given the current status of Palestine). The Palestinian institution also demonstrated a heavy reliance on external donor contributions for its ongoing budget. Therefore, in the opinion of the Forum Councillors, the Palestinian Commission did not comply with the *Paris Principles* and was assessed as an associate member.

At the APF's 9th annual meeting held in September 2004 the Jordan Centre for Human Rights applied for full membership to the APF. At that meeting Forum Councillors determined that the institution was established via a Royal Decree and temporary law. Forum Councillors have traditionally not recognised a Decree as being sufficient to meet the *Paris Principles* requirement that an institution be established by a 'constitutional or legislative text'. Forum Councillors also felt that a Decree does not provide a sufficiently secure basis for the establishment of a national institution. In the opinion of the Forum Councillors the Jordan institution did not comply with the *Paris Principles* and was granted associate membership.

A similar assessment was made by Forum Councillors regarding establishment by Royal Decree of the National Human Rights Committee of Qatar which applied for candidate membership at the APF's 10th annual meeting in August 2005. In addition that Decree provided that government members appointed to the Committee were entitled to vote which is contrary to the *Paris Principles*. In the opinion of the Forum Councillor's the Qatar Committee did not comply with the *Paris Principles* and was assessed as an associate member.

Review of membership

The APF recognizes that NHRIs and the environments in which they operate in are rarely static. As institutions created by the state, one of the inherent tensions is that NHRIs can be vulnerable to negative government actions such as the weakening of legislation or the cutting of a budget which can produce a net effect of loss in competence and independence. NHRIs are also vulnerable to national political upheaval and social conflict. Therefore a continuous review is important to maintain the credibility and independence of national human rights institutions.

The APF constitution provides a mechanism for review of its membership.⁵ It also provides for possible outcomes if the review process determines that a full member institution is no longer in compliance or only partially complies with the *Paris Principles*.

There are two processes for review under the APF constitution for full members. The first process provides that Forum Councillors may decide to review the compliance of a full member with the *Paris Principles* on their own motion at any time. The second process requires the institution to voluntarily subject itself to review by notifying the APF of any constitutional, legislative or administrative changes which may affect its actual compliance or ability to comply with the *Paris Principles*.

To date the first process has not been used. However, the second process, the voluntary review, has been utilised – in the first instance by the *New Zealand Human Rights Commission (NZHRC)*. The NZHRC utilised the review process at the APF 8th annual meeting held in Nepal in 2004 when it notified the Forum Council of changes to its legislation - the Human Rights Act 1993. Forum Councillors determined that the legislative changes did not materially impact on the compliance of the National NZHRC with the *Paris Principles* and it retained its full membership status.

Many of you would be aware of recent political developments in Fiji (December 2006) which saw the assumption of executive power by the Military Commander in Fiji. Shortly after taking over the Military Commander appointed to the vacant position of Chairperson of the Fiji Human Rights Commission (FHRC) a new Acting Chairperson. This direct appointment by the Commander appears to have bypassed the Constitutional provision for appointments to the FHRC. The FHRC has, as it is required to do so under the APF's Constitution, notified the APF of this appointment and requested an assessment of the Commission to determine whether it still meets international endorsed minimum standards, particularly with regard to its independence. The APF has written to the Acting Chairperson of the Fiji Commission requesting information relevant to this issue by 3 March. Our Forum Councillors will meet to discuss this issue on 20 March 2007 in the margins of the next ICC meeting in Geneva.

⁵ APF Constitution, Section 11.4 – 11.5
www.asiapacificforum.net/about/governance/documents/constitution.doc

Forum Councillors may also begin to consider adopting a re-accreditation policy and procedure, similar to the recent ICC policy that will ensure that at regular intervals every member institution is automatically reviewed for its compliance to the Paris Principles.

Advice to governments and NGOs

In addition to the *Paris Principles* being applied by the APF in its accreditation process the APF also plays a role in providing advice to regional governments, NGOs and academic institutions on the importance and application of the *Paris Principles* as the internationally accepted minimum benchmark in the establishment of a national human rights institution. Governments that have recently sought and received advice from the APF on establishing a NHRI include Cambodia, People's Republic of China, Japan, Pakistan and the Solomon Islands.

Training and capacity-building

The APF is ensuring that our training programs contain modules on NHRIs and international standards which aim to encourage our participants, mainly staff members and commissioners from member institutions, to develop their understanding, knowledge and skills on the *Paris Principles* and to undertake activities which assess their own institution's compliance with the *Paris Principles*. For example this module was included in recent APF training on the *role of NHRIs and human rights defenders* which was held last week in Bangkok, Thailand and hosted by the National Human Rights Commission of Thailand. The section on the *Paris Principles* focused on the criteria including composition and guarantees of independence, pluralism, methods of operation, roles and functions. The training was attended by commissioners and staff from the human rights commissions of Indonesia, Malaysia, Philippines, Thailand and Timor-Leste. In addition this module was also used in the APF training conducted on *NHRIs and International Human Rights System* which was held in Amman, Jordan in December 2006 and hosted by the Jordan National Centre for Human Rights. This training was attended by the institutions of Jordan, Qatar, Palestine and Afghanistan. The APF regarded the training on the *Paris Principles* at this program as particularly important because all of these institutions with the exception of Afghanistan are not *Paris Principle* compliant and would amongst other things provide those participants with a good understanding of what is required to strengthen those institutions.

Research

In terms of research the APF is wishing to encourage further intellectual rigour and discussion on the *Paris Principles* and their application by developing a research component on its website so that it can post academic articles and critiques on national institutions and the Paris Principles and ensure they are made available to the public and human rights practitioners.

Conclusion

The APF recognises that it has an important responsibility to act to ensure that institutions accredited to its full membership category meet the highest possible standard. It also works towards providing advice and capacity-building programs to all its member institutions but particularly to its candidate and associate institutions which only partially comply or do not fully comply with the *Paris Principles*. The *Paris Principles* are firmly entrenched in the foundation documents of the APF along with its membership accreditation process. The APF and the ICC are in essence playing important roles as the respective regional and international gatekeepers. In addition the APF is seeking to enhance the application of the *Paris Principles* through its advice to governments and NGOs and through its training programs and its encouragement of further research on NHRIs and the *Paris Principles*.

The demands and expectations on both the APF and the ICC will only increase along with the growth in national institutions in the Asia Pacific region and globally. Further many NHRIs, as evidenced in our region, have their compliance to the *Paris Principles* tested, sometimes without warning, due to changed circumstances often as a result of actions taken by governments or even military leaders. These circumstances, as observed by the APF, reinforce the need for bodies such as the APF and the ICC to continue to uphold the criteria set out in the *Paris Principles* and to ensure that we are at the forefront of discussions, particularly with governments (including those that have already established a NHRI or considering establishing a national institution) on the relevance of the *Paris Principles* and how it can serve as a useful tool to assist them in meeting their obligations to provide effective and independent national mechanisms to respect, promote and protect human rights.