



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

...a partnership for human rights in our region

REPORT OF THE EIGHTH ANNUAL MEETING

**KATHMANDU, NEPAL
16-18 FEBRUARY 2004**

The Asia Pacific Forum of National Human Rights Institutions gratefully acknowledges the support provided by its donors including the United Nations Office of the High Commissioner for Human Rights, the Government of Australia (AusAID), the Government of India, the Government of the Republic of Korea, the Government of New Zealand (NZAID), the Government of the United States (Department of State), the British Council, the Brookings Institution, the MacArthur Foundation and the National Endowment for Democracy.

TABLE OF CONTENTS

1. SUMMARY	4
2. BACKGROUND TO THE MEETING	6
3. OBJECTIVES OF THE MEETING	6
4. MEETING AGENDA	8
5. PARTICIPATION	9
6. PRIVATE MEETING OF FORUM MEMBERS AND THE OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS	10
7. OPENING CEREMONY	15
8. MEETING OF THE ADVISORY COUNCIL OF JURISTS	15
9. OUTCOMES OF THE MEETING	16
10. NEXT MEETING	17
ANNEX 1 – MEETING AGENDA	18
ANNEX 2 – CONCLUDING STATEMENT	24
ANNEX 3 – LIST OF PARTICIPANTS	28
ANNEX 4 – NGO STATEMENT	51



Representatives of the Asia Pacific Forum of National Human Rights Institutions

Eighth Annual Meeting

**Kathmandu, Nepal
16-18 February 2004**

1. SUMMARY

The Asia Pacific Forum was established in 1996 following the inaugural Regional Workshop of National Human Rights Institutions which was held in Darwin, Australia. The second Regional Workshop was held in New Delhi, India from 10 to 12 September 1997, the third annual meeting took place in Jakarta, Indonesia from 6 to 9 September 1998, the fourth annual meeting took place in Manila, the Philippines from 6 to 9 September 1999, the fifth annual meeting took place in Rotorua, New Zealand from 7 to 9 August 2000, the sixth annual meeting took place in Colombo, Sri Lanka from 24 to 27 September 2001 and the seventh annual meeting took place in New Delhi, India from 11 to 13 November 2002.

The Eighth Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions was held in Kathmandu from 16 to 18 February 2004. The National Human Rights Commission of Nepal hosted the Meeting. The Secretariat of the Asia Pacific Forum of National Human Rights Institutions provided organisational support. Financial assistance was provided by the Office of the United Nations High Commissioner for Human Rights (OHCHR), the Government of Australia, through its international aid agency, AusAID, the British Council and the US State Department.

The Afghan Independent Human Rights Commission and the Palestinian Independent Commission on Citizen's Rights were formally accepted into the Forum as Associate Members, increasing the Forum's membership to fourteen institutions. The Forum reaffirmed the full membership of the New Zealand Human Rights Commission.

The Eighth Annual Meeting was held over three full days beginning with a one day private meeting of its member institutions and the United Nations Office of the High Commissioner for Human Rights which provided an opportunity for extended discussion of the Forum's management, its functioning and future needs. The three-day meeting was also preceded by an informal half-day meeting of the senior executive officers of national human rights institutions.

The Rt Hon Surya Bahadur Thapa, Prime Minister of Nepal opened the meeting. Participants included senior representatives of the fourteen national human rights commissions that comprise the Asia Pacific Forum and representatives of the United Nations High Commissioner for Human Rights. Observers at the Meeting included representatives of regional governments, relevant human rights institutions, inter-governmental organisations and numerous representatives of non-governmental organisations from the region and beyond.

The special theme for the Meeting was *National Human Rights Institutions and the Primacy of the Rule of Law in Countering Terrorism*. The meeting featured a presentation from the Advisory Council of Jurists of its interim report on the Reference on the Rule of Law in Countering Terrorism.

The objectives of the Meeting were to consolidate and build on the program of practical, co-operative activities developed by the Forum to strengthen the functioning and assist in the development of regional national human rights institutions.

Under the constitutional arrangements adopted at the Sixth Annual Meeting the National Human Rights Commission of Nepal was unanimously elected to the position of Chairperson of the Forum. The National Human Rights Commission of India and the Human Rights Commission of the Republic of Korea were also elected to the two positions of Deputy Chairpersons.

The Meeting reviewed and endorsed the Forum's activities over the past twelve months and provided member commissions and participants with an opportunity to discuss a wide range of issues related to the protection and promotion of human rights in the Asia Pacific region.

Forum Members also addressed the work of the International Coordinating Committee of National Human Rights Institutions and the involvement of Asia Pacific national institutions in the international human rights system. Forum members elected the Fiji Human Rights Commission, the National Human Rights Commission of Nepal, the Philippines Commission on Human Rights and the National Human Rights Commission of the Republic of Korea to be the four regional representatives to the International Coordinating Committee of National Human Rights Institutions. The Fiji Human Rights Commission was nominated and selected to represent the Forum on the ICC's accreditation sub-committee.

A highlight of the Meeting was the third meeting of the Advisory Council of Jurists to consider the Forum's reference on the rule of law in countering terrorism.

Forum Members agreed on action on a number of important matters including: a decision to formulate a new reference to the Advisory Council of Jurists on the issue of the primacy of the prevention of torture during detention; a decision to establish a working group to assist in the development of the proposed international convention on the rights of people with disabilities; a commitment to consider the recommendations of the Advisory Council of Jurists on the issue of the rule of law and terrorism; and a decision to adopt a flat fee of \$3000 USD per full member institution per annum and \$1500 USD per candidate and associate member institution per annum with the possibility that these fees could also be paid by the provision of services to the Forum of an equivalent value 'in kind'.

The Meeting adopted a comprehensive Statement of Conclusions that reaffirmed the Forum's commitment to promoting the development of national human rights institutions in conformity with the Paris Principles.

The Forum gratefully accepted the kind offer of the National Human Rights Commission of the Republic of Korea to host the Ninth Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions in September 2004. The Forum also gratefully

accepted the kind offer of the National Human Rights Commission of Mongolia to host the Tenth Annual Meeting in 2005 and the kind offer of the Fiji Human Rights Commission to host the Eleventh Annual Meeting in 2006.

2. BACKGROUND TO THE MEETING

The Asia Pacific Forum of National Human Rights Institutions (the Forum) was established in July 1996 following a Regional Workshop held in Darwin, Australia. That Workshop involved four of the five national human rights commissions that had been established in the Asia Pacific region at that time, as well as representatives of regional governments and non-governmental organisations. The four national human rights commissions were those of Australia, India, Indonesia and New Zealand.

The inaugural Workshop adopted the *Larrakia Declaration*, which set out some basic principles to guide the work of the Forum in promoting the development and strengthening of regional human rights commissions. Two key elements underpinning the Forum's activities are a commitment to the United Nations *Principles Relating to the Status of National Institutions* (the Paris Principles) and a commitment to the universality and indivisibility of human rights. The *Larrakia Declaration* also set out an agreed basis on which regional human rights commissions would co-operate to promote the observance of human rights within the Asia Pacific region.

The four inaugural member commissions of the Forum were subsequently joined by the Philippines Commission on Human Rights, the Human Rights Commission of Sri Lanka, the Fiji Human Rights Commission, the National Human Rights Commission of Nepal, the National Human Rights Commission of Mongolia, the National Human Rights Commission of Malaysia, the National Human Rights Commission of South Korea, the National Human Rights Commission of Thailand and Associate Members, the Afghan Independent Human Rights Commission and the Palestinian Independent Commission on Citizen's Rights. This group of fourteen institutions currently comprises the membership of the Forum.

The Eighth Annual Meeting took place over three full days, beginning with a one day closed business session of its member institutions which provided an opportunity for extended discussion of the Forum's management, its functioning and future needs. The Forum Secretariat produced a substantial number of background papers and other documentation designed to assist discussions during the Meeting and to propose practical courses of action in a number of priority areas.

3. OBJECTIVES OF THE MEETING

Annual Meetings of the Forum have become a key regional human rights initiative in bringing together national institutions, non-government organisations, United Nations agencies and governments.

The Eighth Annual Meeting had two main objectives:

- (i) to promote cooperation among, and strengthening of, national human rights institutions in the Asia Pacific region through (a) enabling discussion of issues (b) facilitating joint activity on issues and in areas of mutual interest and commitment, and (c) encouraging the development of joint projects, training programs and staff exchanges;
- (ii) to encourage and assist those States that are in the process of establishing national human rights institutions or have taken concrete steps to initiate this process through, *inter alia*, the provision of practical assistance and support.

The specific objectives of the Eighth Annual Meeting were to:

- (i) Highlight the role of the Forum and its member institutions in the protection and promotion of human rights at a regional level;
- (ii) Develop a coordinated international, regional and national approach between Forum member institutions to address issues associated with the rule of law and terrorism in the Asia Pacific;
- (iii) Review the Forum's operations for the past year, including the Regional Workshop on the Rights of People With Disabilities, the regional investigations techniques training program, education activities, the staff exchange program and other technical assistance programs;
- (iv) Review the activities financed by the United Nations Office of the High Commissioner for Human Rights in the Asia Pacific;
- (v) Review and consider applications for Forum membership from the national human rights institutions of Afghanistan and Palestine;
- (vi) Develop a coordinated approach between the senior executive officers of Forum member institutions to facilitate the implementation of key Forum projects including the staff exchange program and the regional investigations techniques training program.
- (vii) Highlight other themes of regional interest.
- (viii) Encourage and assist those States that are in the process of establishing national human rights institutions or have taken concrete steps to initiate this process through, *inter alia*, the provision of practical assistance and support, *inter alia*, the provision of practical assistance and support.

In addition to meeting these objectives, the Eighth Annual Meeting provided an invaluable opportunity for the exchange of ideas and experiences among the diverse group of participants.

4. MEETING AGENDA

The agenda for the open meeting provided for two full days of discussion in plenary sessions.

The key issues addressed by the Meeting were:

- National Human Rights Institutions and the Primacy of the Rule of Law in Countering Terrorism;
- Disability issues for national human rights institutions including an update on the proposed International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities and a report on the Forum's *Workshop on Promoting the Rights of People with Disabilities*;
- The role of national human rights institutions under the Optional Protocol to the Convention Against Torture and Other Forms of Cruel, Inhumane and Degrading Treatment;
- Regional human rights issues including the activities of the High Commissioner for Human Rights, individual reports from Forum member institutions and recent developments in regional States considering the establishment of national human rights institutions;
- Reports from Forum members on standing issues arising from the reports of the Advisory Council of Jurists on Trafficking, the Death Penalty and Child Pornography and the decision to formulate a new reference to the Advisory Council of Jurists on the issue of the primacy of the prevention of torture during detention;
- A review of the Forum's operations over the past year focusing on its technical cooperation activities, information dissemination and administrative support to members and other institutions, regional activities, country based projects and participation in international meetings.

In addition, the host Commission provided participants with a briefing on the role, functions and activities of the National Human Rights Commission of Nepal. As in previous meetings, each agenda item was chaired by a different Forum member institution. The Forum Secretariat introduced each item before general discussion. A feature of the Meeting was the contribution of non-governmental organisations which co-ordinated their comments and presented joint statements to each plenary session.

The agenda for the Meeting is at Annex 1.

5. PARTICIPATION

The National Human Rights Commission of Nepal hosted the Eighth Annual Meeting and was represented by its Chairman, the Rt. Hon. Nayan Bahadur Khatri, fellow Commissioners and staff. Chief Commissioners and Commission Presidents as well as senior Commissioners and Directors represented the national human rights commissions of Afghanistan, Australia, Fiji, India, Indonesia, Malaysia, Mongolia, New Zealand, the Palestinian Territories, Philippines, South Korea, Sri Lanka and Thailand. The Forum Secretariat was represented by its Director and staff.

The Rt. Hon. Surya Bahadur Thapa, Prime Minister of Nepal, the Rt. Hon. Nayan Bahadur Khatri, Chairman of the National Human Rights Commission of Nepal and the Chairperson of the Asia Pacific Forum of National Human Rights Institutions and Mr Matthew Kahane, Resident Representative, United Nations Development Program (Nepal), addressed the inaugural session. In the opening statements the distinguished speakers recognised human rights as a vital constituent of the rule of law and an essential element of good governance. In this, the important role of national human rights institutions in protecting and promoting human rights was reiterated. Particular attention was drawn to the challenges posed by international terrorism as well as the current conflict in Nepal.

A large number of observers attended the Meeting. The following regional governments were represented and delivered statements: Australia, India, Indonesia, Nepal, New Zealand, Republic of Korea, Solomon Islands, Taiwan, Thailand and Timor-Leste. The Forum welcomed commitments by many to the establishment and strengthening of national human rights institutions in accordance with the Paris Principles.

Observer representatives also attended from the Islamic Human Rights Commission of Iran, the National Center for Human Rights of Jordan, the Maldives Human Rights Commission and the regional Network of National Human Rights Institutions of the Americas

Representatives of the International Labour Organisation and the United Nations Educational, Scientific and Cultural Organisation (Bangkok) attended the meeting.

Non-governmental organisations (NGOs) were represented by international, regional and national organisations. International NGOs participating in the meeting were: Amnesty International, the Association for the Prevention of Torture, the Canadian Human Rights Foundation, the International Movement Against All Forms of Discrimination and Racism, the International Service For Human Rights and Pax Romana. Regional NGOs at the meeting were: the Asia Pacific Human Rights Network, the Asia Pacific Human Rights Information Center (HURIGHTS Osaka) and the South Asia Human Rights Documentation Centre. National NGOs from Bangladesh, Cambodia, Fiji, Japan, Malaysia, Nepal, New Zealand, Singapore, Sri Lanka and Taiwan also participated.

The full list of participants is contained in Annex 3.

6. PRIVATE MEETING OF FORUM MEMBERS AND THE OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS

The Eighth Annual Meeting began with a one-day business session of its member institutions and the Office of the High Commissioner for Human Rights. This meeting is traditionally closed to all other participants unless otherwise agreed by Forum members.

The Closed Session was chaired by Dr Justice A S Anand, Chairperson of the National Human Rights Commission of India. The following Forum member institutions were in attendance – Australia, Fiji, India, Indonesia, Malaysia, Mongolia, Nepal, New Zealand, Philippines, Republic of Korea, Sri Lanka and Thailand.

Issues of business included: confirmation of attendance; report on Forum activities since the last annual meeting; consideration of the Business Plan 2004-2006; consideration of membership applications; discussion of the Eighth Annual Meeting including the agenda, concluding statement and new reference to the Advisory Council of Jurists; the election of four regional representatives to the International Coordinating Committee of National Institutions (ICC); report from the Senior Executive Officers meeting; update on the Forum's funding arrangements; location of Ninth Annual Meeting and the ICC Seventh International Workshop; and the election of new Chairperson and Deputy Chairpersons.

1. Confirmation of Attendance

Requests to attend the closed session as 'observers' were received from the Afghanistan Independent Human Rights Commission, Islamic Human Rights Commission of Iran, Jordan National Centre for Human Rights, Maldives Human Rights Commission, Palestinian Independent Commission for Citizens Rights and the Network of National Institutions for the Americas. Forum member institutions approved their attendance as observers. However, in accordance with previous practice, applicants seeking Forum membership were asked to leave the room whilst their applications were being discussed.

2. Report on Forum Activities

A written *Report on Forum Activities* had previously been disseminated to all Forum member institutions. The Director of the Forum Secretariat, Mr Kieren Fitzpatrick, spoke to the report and provided the meeting with an overview of the main activities undertaken since the last annual meeting in November 2002. Forum member institutions noted the report¹.

¹ Report available at www.asiapacificforum.net/activities/annual_meetings/eighth/meeting_papers.htm

3. *Business Plan*

A draft Business Plan for the 2004 to 2006 period had previously been disseminated to all Forum member institutions. Forum members discussed the draft Business Plan and agreed to textual changes proposed by individual member institutions. Forum members adopted the Business Plan for 2004 to 2006, as amended, and expressed their appreciation for the work of the secretariat. Members also requested that the secretariat report back on the implementation of the Business Plan to future annual meetings.

4. *Membership Applications*

Forum members considered a review of compliance of the New Zealand Human Rights Commission with the Paris Principles and applications for membership from the Afghanistan Independent Human Rights Commission and the Palestinian Independent Commission for Citizens Rights.

New Zealand Human Rights Commission

The New Zealand Commission initiated a review of its membership status and compliance with the UN General Assembly endorsed *Principles relating to the Status of National Institutions*, (more commonly known as the 'Paris Principles') in accordance with rule 11 of the Forum's Constitution. On 1 January 2002, the *Human Rights Act 1993* was significantly amended by the *Human Rights Amendment Act 2001*. After discussion, Forum members agreed that the legislative amendments did not materially affect the New Zealand Commission's compliance with the Paris Principles and, therefore, that the Commission should retain full membership of the Forum.

Afghanistan Independent Human Rights Commission

Forum members initially deferred consideration of the Afghan Commission's application for membership until its representatives could be present. Consideration of the application subsequently occurred on the 17th February.

The Afghan Commission was established on 6th June 2002 by Presidential Decree. On the 7th January 2004, the Commission became constitutionally entrenched following the adoption of a new Constitution for Afghanistan. However the Presidential Decree establishing the Commission is due to expire on 5th June 2004 and enabling legislation to implement the Constitutional provision requires Parliamentary consideration and approval. Parliamentary elections were not due to occur till June/July 2004.

Following questions by Forum member institutions, the Chairperson of the Afghan Commission advised that she expected that the President of Afghanistan will issue a new Presidential decree, in line with the transitional provisions of the Constitution, to provide

the Commission with an ongoing legal basis failing Parliamentary consideration and adoption of any enabling legislation for the Commission.

Another point raised in discussion was the Afghan Commission's reliance on external funding for its operations, without an apparent contribution by the interim administration of Afghanistan. The Chairperson of the Afghan Commission stated that given the present political and economic situation in Afghanistan, a substantial financial contribution from the administration would be unlikely. The Chairperson did, however, inform Forum members that the present interim administration had provided financial support to the Afghan Commission through the provision of land and accommodation.

Forum members considered that the Afghan Commission does not currently fully comply with the Paris Principles. In determining whether the Afghan Commission should be accorded candidate or associate membership, Forum members considered that, due to the current lack of enabling Parliamentary legislation and the uncertainty associated with Parliamentary elections, the Commission should be provided with associate membership of the Forum.

Forum members praised the work of the Afghan Commission and recognised the very difficult, and often dangerous, circumstances under which it was working. Forum members offered their full support to the Commission.

Palestinian Independent Commission for Citizens Rights

Forum members considered the Palestinian Commission's application for membership.

The Palestinian Commission was established via a Presidential Decree (dated 30th September 1993) issue by President Yasser Arafat in his capacity as President of the Executive Committee of the Palestine Liberation Organisation and the President of the Palestinian National Authority. In addition to the Presidential Decree, Article 31 of the Basic Law of Palestine (a de-facto constitution) makes provision for the establishment of the independent commission. Article 31 of the Basic Law also stipulates that the duties and jurisdiction should be further elaborated via supplementary legislation.

Forum members considered that the Palestinian Commission does not currently fully comply with the Paris Principles. The main issue identified was the lack of any enabling legislation under article 31 of the Basic Law which would, when established, assist in clarifying a number of subsidiary issues concerning the institution's composition and jurisdiction. In addition the Palestinian Commission appeared to be entirely dependent upon external donor contributions for its budget. Forum members therefore admitted the Palestinian Commission as an associate member to the Forum.

Forum members acknowledged the commendable work of the Palestinian Commission and requested that the Forum continue to work in partnership with the Commission to strengthen its institutional capacity.

5. Discussion re: arrangements for the Eighth Annual Meeting

Agenda

Forum members adopted the agenda for the meeting and confirmed their respective roles as either chairpersons or speakers at individual sessions.

Concluding Statement

Forum members noted the arrangements for the finalisation of the concluding statement for the Eighth Annual Meeting.

Next Reference to the Advisory Council of Jurists

Forum members decided to formulate a new reference to the Advisory Council of Jurists on the issue of the prevention of torture during detention and requested the secretariat to prepare draft terms of reference for the consideration and approval of Forum Councillors. Forum members also requested the secretariat to seek financial support to strengthen the work of the Advisory Council.

6. International Coordinating Committee

Election of four regional representatives to the ICC and one regional representative to the ICC accreditation sub-committee

Forum members elected the national human rights institutions from Fiji, Nepal, Philippines and the Republic of Korea to be the four regional representatives to the ICC. The Fiji Commission will serve on the ICC accreditation sub-committee.

Consideration of the draft proposals from the National Consultative Commission of France

Forum members considered the proposals of the National Consultative Commission of Human Rights of France to amend the rules of procedure of the International Coordination Committee of National Human Rights Institutions (ICC) and decided to reject the proposed regulation regarding the activities of 'regional groupings' of national human rights institutions.

Forum members determined that they would respond on an individual basis to the proposal regarding the codification of the rules of procedure of the accreditation sub-committee of the ICC.

7. *Senior Executive Officers*

APF members welcomed the second meeting of the Senior Executive Officers of Forum member institutions and commended their efforts to assist the effective and efficient functioning of national human rights institutions. Forum members also requested that the secretariat continue to assist the Senior Executive Officers in the implementation of their activities.

8. *Funding Arrangements*

Finance and Administration Report

Forum members considered the report of the Forum's finances and administration and adopted the Directors, Auditors and Financial reports for the period ending 31 March 2003. Forum members expressed their appreciation for the financial contributions made to the organisation by its member institutions and the Australian Agency for International Development, British Council, Brookings Institution, Government of India, Government of the Republic of Korea, MacArthur Foundation, National Endowment for Democracy, New Zealand Agency for International Development, OHCHR, UNICEF and the US Department of State.

In addition Forum members considered the need to adopt alternative mechanisms to ensure that the Forum's annual general meetings are held within statutory requirements and accepted the offer of the Australian Human Rights and Equal Opportunity Commission to develop a proposal for the consideration of Forum members to amend the Constitution to address this issue.

Membership Fees

Forum members considered the issue of Forum membership fees and agreed to adopt a flat fee of \$3000 USD per full member institution per annum and \$1500 USD per candidate and associate member institution per annum with the possibility that these fees could also be paid by the provision of services to the APF of an equivalent value 'in kind'. These fees are to come into effect on 1 July 2004.

9. *Location of the Ninth Annual Meeting of the and the ICC Seventh International Workshop*

Forum members gratefully accepted the kind offer of the National Human Rights Commission of the Republic of Korea to host the Ninth Annual Meeting and the ICC's Seventh International Conference of National Institutions in September 2004.

Forum members also gratefully accepted the kind offer of the National Human Rights Commission of Mongolia to host the Tenth Annual Meeting in 2005.

In addition, Forum members gratefully accepted the kind offer of the Fiji Human Rights Commission to host the Eleventh Annual Meeting in 2006.

10. Election of new Chairperson and Deputy Chairpersons

Forum members unanimously elected the National Human Rights Commission of Nepal (as the current host institution of the annual meeting) to the position of Chairperson of the Forum Councillors. The National Human Rights Commission of India (as the host institution for the last annual meeting) and the National Human Rights Commission of the Republic of Korea (as the host institution for the next annual meeting) were also elected unanimously to the two positions of Deputy Chairpersons.

Forum members wished to place on record their sincere appreciation to former Chairperson of the Forum and the Chairperson of the National Human Rights Commission of India, Dr Justice A S Anand, for his outstanding stewardship and contribution to the Forum.

7. OPENING CEREMONY

Delegates to the Eighth Annual Meeting were welcomed with a traditional ‘lighting of the lamp.’

The Rt. Hon. Surya Bahadur Thapa, Prime Minister of Nepal, the Rt. Hon. Nayan Bahadur Khatri, Chairman of the National Human Rights Commission of Nepal and the Chairperson of the Asia Pacific Forum of National Human Rights Institutions and Mr Matthew Kahane, Resident Representative, United Nations Development Program (Nepal), addressed the inaugural session.

In the opening statements the distinguished speakers recognised human rights as a vital constituent of the rule of law and an essential element of good governance. In this, the important role of national human rights institutions in protecting and promoting human rights was reiterated. Particular attention was drawn to the challenges posed by international terrorism as well as the current conflict in Nepal.

8. MEETING OF THE ADVISORY COUNCIL OF JURISTS

The third session of the Advisory Council of Jurists was held in Kathmandu, 16-18 February 2004 alongside the Eighth Annual Meeting. The Advisory Council met to consider the Forum Council’s reference on the issue of the primacy of the rule of law in combating terrorism which was agreed to by the Forum Council at its Seventh Annual Meeting.

All members of the Advisory Council attended the meeting, including: Mr Daman Nath Dhungana (Nepal) - President of the Advisory Council of Jurists, Professor Gillian Triggs

(Australia), Justice Anthony Gates (Fiji), Mr Fali S Nariman (India), Professor Jacob Sahetapy (Indonesia), Dato' Mahadev Shankar (Malaysia), Mr Jugnee Amarsanaa (Mongolia), Hon Justice Susan Glazebrook (New Zealand), Hon Mr Sedfrey Ordoñez (Philippines), Professor Kyong-Whan Ahn (Republic of Korea), Mr Rajendra Goonesekere (Sri Lanka) and Professor Vitit Muntarbhorn (Thailand)

The Advisory Council was serviced by a secretariat including staff from the National Human Rights Commission of Nepal, the Australian Human Rights and Equal Opportunity Commission and the Forum Secretariat.

The role of the Advisory Council was to address the Terms of Reference on the Primacy of the Rule of Law in Combating Terrorism and make recommendations to Forum member institutions. The Advisory Council presented its interim report to the Forum Council in the plenary session of the Eighth Annual Meeting. The Advisory Council's Final Report on the Reference on the Rule of Law in Combating Terrorism is a comprehensive analysis of the international law, standards and principles that relate to anti-terrorism measures. The Report contains detailed information about State laws relative to terrorism, comparing and contrasting State laws with international laws and standards. The Report makes a series of recommendations in relation to member States of the Asia Pacific Forum.²

9. OUTCOMES OF THE MEETING

The Meeting addressed a number of specific human rights issues and reviewed the Forum's activities over the past twelve months. The Meeting provided member commissions and participants with an opportunity to discuss, and exchange information on practical means for improving the protection and promotion of human rights in the Asia Pacific region.

During the Meeting Forum members also made decisions on specific actions which the Forum and member institutions will undertake in the coming year. The Meeting formalised its deliberations and decisions by adopting a comprehensive Statement of Conclusions. The full text of the Statement of Conclusions is at Annex 2.

In addition to the Statement of Conclusions, the Meeting produced a substantial collection of papers prepared by the Forum Secretariat. These provide valuable background information and analysis of the main agenda items and are available on the Forum web site at www.asiapacificforum.net

² Report available at < <http://www.asiapacificforum.net/jurists/terrorism/intro.htm>>

10. NEXT MEETING

The Forum gratefully accepted the kind offer of the National Human Rights Commission of Korea to host the Ninth Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions in September 2004.

Forum members also gratefully accepted the kind offer of the National Human Rights Commission of Mongolia to host the Tenth Annual Meeting in 2005. In addition, Forum members gratefully accepted the kind offer of the Fiji Human Rights Commission to host the Eleventh Annual Meeting in 2006.

ANNEX 1 – MEETING AGENDA

EIGHTH ANNUAL MEETING OF THE ASIA PACIFIC FORUM OF NATIONAL HUMAN RIGHTS INSTITUTIONS

MONDAY 16 – WEDNESDAY 18 FEBRUARY 2004

Hyatt Regency Hotel
Kathmandu, Nepal

PROGRAM

ARRIVAL DAY SUNDAY 15 February 2004

3:00 – 5:00pm **Meeting of Senior Executive Officers – Administrative Issues**

Room: Bhaktapur

Chair: Mr Richard Handley, New Zealand Human Rights Commission

4:00 – 4:30pm **Registration** (open to all delegates)

Room: Business Centre

5:15pm APF Members, Advisory Council of Jurists and OHCHR
Meet in hotel lobby for transport to the Australian Embassy

6:00pm **Cocktail function** (APF Members, Advisory Council of Jurists and OHCHR only)

Hosted by the Australian Ambassador to Nepal,
Mr Keith Gardner

Closed Session - Forum Members and OHCHR

DAY 1 MONDAY 16 February 2004

8:30am **Registration**

Room: Nargarkot

9:00 –12:00 **Forum Members Meeting – General Business**

Room: Kirtipur

Chair: Dr Justice A.S. Anand, National Human Rights Commission of India

1. Report on Forum Activities (Secretariat)
2. Business Plan (Secretariat)
3. Membership Applications (Secretariat)

4. Discussion re Eighth Annual Meeting (Secretariat)
 - Agenda
 - Concluding Statement
 - 2004 Reference to the Advisory Council of Jurists
5. International Coordinating Committee
 - Election of four regional representatives to the ICC and one regional representative to the ICC accreditation sub-committee (Secretariat)
 - Consideration of draft regulation for Accreditation Sub-Committee
6. Senior Executive Officers – Issues for Discussion (Chair, Senior Executive Officers Network)
7. Funding Arrangements for the Asia Pacific Forum (Secretariat)
8. Location of Ninth Annual Meeting of the Forum and the next international meeting of national institutions (Secretariat)
9. Election of new Chairperson and Deputy Chairpersons
10. General Business

12:00 – 1:00

Lunch

1:30 – 3:30

Meeting of Senior Executive Officers – Management Issues

Chair: to be confirmed

3:30 – 4:30

Registration (for all other delegates)

Room: Nargarkot

Opening Ceremony, Cultural Program and Formal Dinner

5:00pm

Opening Ceremony

Room: Regency Ballroom (guests are asked to be seated by

5:15pm)

5:30pm

Rt Hon Nayan Bahadur Khatri, Chairman
National Human Rights Commission of Nepal

Rt. Hon. Surya Bahadur Thapa
Prime Minister of Nepal

Mr Matthew Kahane
Resident Representative
United Nations Development Program (Nepal)

6: 15pm	Cocktail Reception Light refreshments will be served prior to the commencement of the Cultural Program
6: 45pm	Cultural Program
8: 00pm	Formal Dinner
10: 00pm	End of Day 1

Open Session – Forum Members and Registered Observers

DAY 2 TUESDAY 17 February 2004

8.30	Registration Room: Nargarkot
9:00 – 10:00	Asia Pacific Regional Cooperation Room: Regency Ballroom Chair: Rt Hon N.B. Khatri National Human Rights Commission of Nepal Mr Nicholas Howen (10 minutes) Office of the High Commissioner for Human Rights Report from Closed Session Meeting (10 minutes) Mr Kieren Fitzpatrick Asia Pacific Forum of National Human Rights Institutions Reports from representatives of Asia Pacific Governments (3 minutes each) Report from Non-Government Organisations (10 minutes) Representative Asia Pacific Human Rights Network
10:00 – 10.15	Open Discussion - Question and Answer Session
10.15	Morning Tea
10.45	Reports from Forum Members (3 minutes) Chair: National Human Rights Commission of Mongolia <ul style="list-style-type: none"> • Australia • Fiji • India • Indonesia • Malaysia • Mongolia • Nepal • New Zealand • Philippines • Republic of Korea • Sri Lanka • Thailand

- 11.25 **Reports from other Human Rights Institutions** (3 minutes)
- Afghanistan
 - Iran
 - Jordan
 - Maldives
 - Palestinian Territories
 - National Institutions Network of the Americas
- 11:45 – 12.00 **Ten Years on from the Paris Principles: The Future for National Human Rights Institutions**
- Mr Orest Nowosad
Office of the High Commissioner for Human Rights
- Representative, National Human Rights Institutions
- Representative, Non-Government Organisations
- 12.00 – 12.30 Open Discussion – Questions and Answer Session
- 12.30 **Lunch**
- 2.00 **Thematic Issues**
Chair: Human Rights Commission of Sri Lanka
- 2.00 - 3.00 **Disability Issues for National Human Rights Institutions**
- Update on work toward the establishment of International Disability Convention
National Human Rights Commission of India
- 3.00 - 4.00 **National Human Rights Institutions and the Prevention of Torture**
- Overview of the Optional Protocol to the UN Convention Against Torture
Ms Debra Long, Association for the Prevention of Torture
- Role of National Human Rights Institutions in the Implementation of the Optional Protocol
Mrs. Esther Schaufelberger, Association for the Prevention of Torture
- 4.00 Afternoon Tea
- 4.30 **The Work of the National Human Rights Commission of Nepal** (Presentation 1)
Representative, National Human Rights Commission of Nepal
- 5.00 Open Discussion - Question and Answer Session
- 5.30 **The Work of the Fiji Human Rights Commission in Race Relations – Video Presentation**

Introduced by Dr Shaista Shameem, Fiji Human Rights Commission

6.00 End of Day 2 – Free Evening

National Human Rights Institutions and the Primacy of the Rule of Law in Countering Terrorism

DAY 3 WEDNESDAY 18 February 2004

Room: Regency Ballroom

9:00 **National Human Rights Institutions, the Rule of Law and Anti-Terrorism Measures**

Chair: National Human Rights Commission of Korea

Report from the Advisory Council of Jurists

Representatives, Advisory Council of Jurists - Presentation and Panel Discussion

10.00 – 10.30 Open Discussion – Questions and Answers

10:30 Morning tea

11:00 **Balancing Human Rights Protections and Security Concerns: Sub-Regional Perspectives**

Chair: National Human Rights Commission of Thailand

South East Asia – Presentation from the Indonesian National Commission on Human Rights

South Asia - Presentation from the National Human Rights Commission of India

North Asia – Presentation from the National Human Rights Commission of Korea

Australasia and the Pacific - Presentation from the Australian Human Rights and Equal Opportunity Commission

11.40 – 12.30 Open Discussion – Questions and Answers

12:30 **Lunch**

2:00 **Advisory Council of Jurists - 2004 Reference and Report from APF Members**

Chair: Human Rights Commission of Malaysia

a) Decision on the 2004 Reference to the Advisory Council

b) Report from APF Members on Standing Issues

- Trafficking
- Death Penalty
- Child Pornography

- 3.00 – 3.30 Open Discussion – Questions and Answers
- 3:30 **Afternoon tea**
- 4:00 **CLOSED SESSION (Forum Members and OHCHR)**
Final Drafting of the Concluding Statement
Room: Bhaktapur
- 4:00 **The Work of the National Human Rights Commission of Nepal** (Presentation 2)
Representative, National Human Rights Commission of Nepal
- 5:00 **FINAL CONFERENCE STATEMENT**
Adoption of Statement of Conclusions and Recommendations
Room: Regency Ballroom
Chair: National Human Rights Commission of Nepal
- 6.00pm** End of Eighth Annual Meeting

Note: The Advisory Council of Jurists will meet separately on Monday 16th and Tuesday 17th February before joining the proceedings of the 8th Annual Meeting on Wednesday 18th February.

ANNEX 2 – CONCLUDING STATEMENT

EIGHTH ANNUAL MEETING OF THE ASIA PACIFIC FORUM OF NATIONAL HUMAN RIGHTS INSTITUTIONS

16th – 18th February 2004, Kathmandu, Nepal

CONCLUDING STATEMENT

Introduction

1. The Asia Pacific Forum of National Human Rights Institutions (the Forum), consisting of the National Human Rights Commissions of Nepal, Afghanistan, Australia, Fiji, India, Indonesia, Malaysia, Mongolia, New Zealand, Palestine, Philippines, Republic of Korea, Sri Lanka and Thailand, held this Eighth Annual Meeting in Kathmandu, Nepal from 16th to 18th February 2004.
2. The Forum expressed its gratitude to the National Human Rights Commission of Nepal for hosting the meeting, to the Office of the United Nations High Commissioner for Human Rights (OHCHR) for its co-sponsorship and to all its donors for their financial support. The Forum expressed its appreciation for the efforts of the Commissioners and staff of the National Human Rights Commission of Nepal and the secretariat of the Forum for their work in the organisation of the meeting.
3. The Forum welcomed the participation of the Advisory Council of Jurists and the representatives, as observers, from the ILO, UNDP and UNESCO, the governments of Australia, India, Indonesia, Nepal, New Zealand, Republic of Korea, Solomon Islands, Taiwan, Thailand, Timor-Leste, United Kingdom and the United States of America, the institutions from Iran, Jordan and the Maldives, the regional Network of National Human Rights Institutions of the Americas, and thirty eight international, regional and national non-governmental organizations.
4. The Rt. Hon. Surya Bahadur Thapa, Prime Minister of Nepal, Rt. Hon. Nayan Bahadur Khatri, Chairman of the National Human Rights Commission of Nepal and the Chairperson of the Asia Pacific Forum of National Human Rights Institutions and Mr Matthew Kahane, United Nations Resident Coordinator (Nepal), on behalf of Mr Bertrand Ramcharan, Acting High Commissioner for Human Rights, addressed the inaugural session. In the opening statements the distinguished speakers recognised the need to protect and promote human rights and ensure the rule of law in combating terrorism.

Conclusions

The Forum, during its closed business session:

5. Noted the activity report of the Forum over the last twelve months and adopted the Forum's Business Plan for 2004 to 2006. Forum Councillors expressed their appreciation for the work of the secretariat and requested the secretariat to report back on the implementation of the Business Plan to the annual meetings of the Forum.
6. Reaffirmed that the structure and responsibilities of national institutions should be consistent with the Principles Relating to the Status of National Institutions adopted by the United Nations General Assembly (Resolution 48/134) commonly referred to as the 'Paris Principles.' On this basis it reaffirmed the full membership of the New Zealand Human Rights Commission and admitted the Afghanistan Independent Human Rights Commission and the Palestinian Independent Commission for

Citizens Rights as associate members of the Forum. This increased the Forum's overall membership to 14 institutions. The Forum will assist the new associate members, where possible, to become fully compliant with the Paris Principles.

7. Decided to formulate a new reference to the Advisory Council of Jurists on the issue of the prevention of torture during detention and requested the secretariat to prepare draft terms of reference for the consideration and approval of the Forum. The Forum also requested the secretariat to seek financial support to strengthen the work of the Advisory Council of Jurists.
8. Considered the proposals of the National Consultative Commission of Human Rights of France to amend the rules of procedure of the International Coordinating Committee of National Human Rights Institutions and decided to reject the proposed regulation regarding the activities of 'regional groupings' of national human rights institutions. The Forum also elected the national human rights institutions from Fiji, Nepal, Philippines and the Republic of Korea to be the four regional representatives to the International Coordinating Committee of National Institutions. The Fiji Human Rights Commission will serve on the International Coordinating Committee accreditation sub-committee.
9. Welcomed the second meeting of Senior Executive Officers of Forum member institutions and commended their efforts to assist the effective and efficient functioning of national human rights institutions. The Forum also requested that the secretariat continue to assist the Senior Executive Officers in the implementation of their activities.
10. Considered the secretariat's report of the Forum's finances and administration and adopted the Directors and Financial reports, and auditors report, for the period ending 31 March 2003. Forum Councillors expressed their appreciation for the financial contributions made to the Forum by its member institutions and the Australian Agency for International Development, British Council, Brookings Institution, Government of India, Government of the Republic of Korea, MacArthur Foundation, National Endowment for Democracy, New Zealand Agency for International Development, OHCHR, UNICEF and the US Department of State.
11. Considered the need to adopt alternative mechanisms to ensure that the Forum's annual general meetings are held within statutory requirements and accepted the kind offer of the Australian Human Rights and Equal Opportunity Commission to develop a proposal for the consideration of Forum Councillors to amend the Forum's Constitution to address this issue.
12. Considered, for the first time, the issue of Forum membership fees and agreed to adopt a flat fee of \$3000 USD per full member institution per annum and \$1500 USD per candidate and associate member institution per annum with the possibility that these fees could also be paid by the provision of services to the Forum of an equivalent value 'in kind'.
13. Unanimously elected the National Human Rights Commission of Nepal (as the current host institution of the annual meeting) to the position of Chairperson of the Forum. The National Human Rights Commission of India (as the host institution for the last annual meeting) and the National Human Rights Commission of the Republic of Korea (as the host institution for the next annual meeting) were also elected unanimously to the two positions of Deputy Chairpersons.

The Forum, during its open plenary sessions:

14. Expressed appreciation to the OHCHR for its continuing commitment to strengthen partnerships with the Forum across all relevant thematic and geographical activities. In turn, the Forum requested that the national institutions team of the OHCHR be strengthened.
15. Requested the support of the OHCHR and Member States for the implementation of the activities contained in both its Business Plan and the UN framework for regional human rights arrangements in

the Asia Pacific. The Forum welcomed the participation of the coordinator of the Asia Pacific geographic team and recommended that this practice continue.

16. Appreciated the constructive contribution of non-governmental organisations to the work of the Forum. The Forum thanked non-governmental organisations for their substantive written submissions and their collective participation and advocacy in the meeting through the Asia Pacific Human Rights Network. The Forum reaffirmed the importance of undertaking joint practical collaborative activities with non-governmental organisations for the protection and promotion of human rights and welcomed their continued participation in annual meetings of the Forum.
17. Welcomed the reports of Forum members, relevant institutions and regional governments to protect and promote human rights. The Forum stressed the need for constructive and practical engagement with governments and thanked them for their active participation and constructive contributions to the meeting. In particular, the Forum congratulated the governments of the Maldives, Solomon Islands and Timor-Leste for their decision to establish national human rights institutions in full compliance with the Paris Principles and requested that the secretariat provide assistance, within available resources, to assist in this process.
18. Reported on their implementation of the recommendations of the Advisory Council of Jurists' reports on the death penalty, child pornography on the internet and trafficking. A number of Forum Councillors specifically cited the successful implementation of the Advisory Council's recommendations.
19. Called on governments of Forum member institutions to strengthen the independence and institutional capacity of national institutions to enable them to carry out their mandates more effectively. In particular, national institutions should be provided with a wide and unrestricted mandate to conduct investigations of human rights violations. Governments should also give serious consideration to the determinations and recommendations of national human rights institutions and ensure their effective implementation.
20. Welcomed progress to develop a new international convention on the rights of people with disabilities, as advocated by national institutions at the workshop held in New Delhi, India in 2003. Forum institutions agreed to establish a working group to assist in the development of the proposed convention. The Forum welcomed the offer of the OHCHR to continue to support the Forum in these activities.
21. Considered the potential role of national human rights institutions under the Optional Protocol to the Convention Against Torture and Other Forms of Cruel, Inhumane and Degrading Treatment. Forum member institutions recommend that their governments sign and ratify both the Convention and its Optional Protocol.
22. Considered the issue of terrorism and the rule of law, including the views of international experts and non-governmental organisations, and the interim report of the Advisory Council of Jurists. The Forum warmly thanked the jurists of the Advisory Council for their expertise and the comprehensive scope of their report. Forum member institutions would carefully consider the final recommendations of the Advisory Council and report back to the next annual meeting.
23. Was gravely concerned about the violations of human rights in Nepal and appreciates the efforts of the National Human Rights Commission of Nepal to promote the signing of the Human Rights Accord between the conflicting parties with a view to promoting peace.
24. Gratefully accepted the kind offer of the National Human Rights Commission of the Republic of Korea to host the Ninth Annual Meeting of the Forum and the International Conference of national institutions in September 2004.

25. Gratefully accepted the kind offer of the National Human Rights Commission of Mongolia to host the Tenth Annual Meeting in 2005.
26. Gratefully accepted the kind offer of the Fiji Human Rights Commission to host the Eleventh Annual Meeting in 2006.

A report on the meeting will soon be available on the Forum website.
www.asiapacificforum.net

ANNEX 3 – LIST OF PARTICIPANTS

ASIA PACIFIC FORUM OF NATIONAL HUMAN RIGHTS INSTITUTIONS

Eighth Annual Meeting

16 – 18 February 2004

(Last updated 27 February 2004)

[Please e-mail all updates and corrections to apf@asiapacificforum.net]

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ANNEX 4 – NGO STATEMENT

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Establishing a Regional Human Rights Mechanism for the Asia-Pacific Region

Introduction

The Asia-Pacific region currently exists as the only continent without a regional human rights mechanism to adjudicate over the protection of human rights by member states. All efforts taken to establish such a mechanism, most notably perhaps through the annual workshops arranged by the UN Office of the High Commissioner for Human Rights, have been hampered by traditionalist concepts of state sovereignty emphasizing the schism between “western” and “non-western” values.³ Ordinarily, these regional co-operation workshops follow the pattern adopted by the 1998 Tehran ‘Framework for Regional Technical Cooperation in the Asian and Pacific Region’ by discussing national capacity building, human rights education, the role of national institutions, and economic, social and cultural rights. Whilst these are commendable issues, the framework, intentionally or otherwise, has driven a trench between the above issues and addressing the question of establishing a permanent regional mechanism for human rights. Beyond the guise of a “step-by-step”, “building blocks” approach⁴, these developments have heightened the suspicion that the UN annual workshops are a means for states to *avoid* establishing any such permanent arrangement under the pretext of appearing committed to the ideal.

The fact that 20 years of round-table discussions have produced no tangible results in this regard signifies that any expectations of a regional mechanism comparable to that of the European or Inter-American Courts on Human Rights are unrealistic. Attempts at drafting non-official Asian Charters for Human Rights have invariably failed, being inconsistent with the obligations of international customary or conventional law, or hijacked by self-appointed enforcing authorities such as the Association of Asian Parliaments for Peace.⁵ Accepting a “building blocks” approach as the agreed means towards progress, and “mindful of the vastness of, and diversities within, the Asia-Pacific region”⁶, APHRN suggests that the focus for establishing a regional human rights arrangement needs to be shifted towards those institutions already functioning in the Asia Pacific region and capable of moving incrementally towards such an undertaking. One possibility is through enhancing the work of the Asia Pacific Forum of National Human Rights Institutions (APF), and particularly, its Advisory Council of Jurists (ACJ).

³ Bangkok Declaration (see) wherein it is recognized that “while human rights are universal in nature, they must be considered in the context of a dynamic and evolving process of international norm-setting, bearing in mind the significance of national and regional particularities and various historical, cultural and religious backgrounds”, U.N. Doc. A/CONF.157/PC/59.

⁴ Regional Arrangements for the Promotion And Protection Of Human Rights in the Asian and Pacific Region: Report of the Secretary-General submitted in accordance with Commission resolution 2001/ 77, U.N. Doc. E/CN.4/2002/WP3, 8 March 2002, para. 4.

⁵ SAHRDC, The Proposed Asian Human Rights Charter: No Rights At The End of This Tunnel, HRF/27/00, 11 November 2000.

⁶ Conclusions of the Eleventh Workshop on Regional Cooperation for the Promotion and Protection of Human Rights in the Asia-Pacific Region, Islamabad, Pakistan, 25-27 February 2003, para. 7.

Strengthening the Role of the Asia-Pacific Forum

The APF constitutes the most cohesive regional human rights body in the Asia-Pacific region. Under the limited but useful guidance of the Paris Principles, the APF intends to co-ordinate the functioning of national human rights institutions in accordance with international best practice. Unlike in Europe or the Americas, which have adopted regional human rights Conventions and Courts that arguably surpass the protections afforded by the UN international bill of rights, national human rights institutions still represent the best means to monitor, investigate, and seek redress for human rights abuses in Asia. As the organisation charged with the difficult task of ensuring that these national human rights institutions meet international standards of independence and competency, the APF is the best-positioned intermediary in the region between individual state policy and/or behavior and their respective monitoring bodies.

In order for the APF to operate in the manner of a regional human rights mechanism, a strengthening of its mandate and operating powers are required. The mandates of national institutions in the Asia Pacific region have largely been determined by the political context in which they are created, and thus an imperative must firstly be placed on establishing a centralised and uniform policy binding on all national institutions, plus a system of assessment for effective implementation of the Paris Principles. Whilst these principles only exist as a 'lowest common-denominator', their provisions are yet rarely adhered to by respective national institutions. This problem is compounded by the fact that the APF permits such concessions in its rules of membership.⁷ This allows for less than perfect institutions to gain membership. This also damages the legitimacy of the APF as a forum concerned with independence, transparency and accountability, all fundamental prerequisites of a regional human rights body, and needs to be quickly rectified.

Most importantly the APF must take initiatives beyond the Paris Principles to stress the role of the quasi judicial capacity of national institutions. As mere commentators on human rights, national institutions capabilities are severely weakened, but as investigative bodies they serve as a vital connection to any regional sphere. To date, Asia-Pacific national institutions have been deficient in recognising their role in the international arena. A broader mandate adopted by the APF, which would not only specify national institutions' spheres of competence and jurisdiction but also encourage them to intervene in relevant court cases, would empower the APF to address human rights violations as an independent regional adjudicator.

Proposed Role for the Advisory Council of Jurists

The ACJ was established following its endorsement at the Third Annual Meeting of the APF held in Jakarta, Indonesia, in September 1998. It acts as "a specialist advisory body to provide, on request, jurisprudential guidance to the Forum and its member institutions."⁸ Its jurisdiction is to "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."⁹ Requests may be taken from national institutions that are members of the Forum, provided the subject relates only to their national jurisdiction, yet it has no jurisdiction to receive requests from individuals, organisations, domestic judiciaries or governments.¹⁰

APHRN proposes that the Terms of Reference of the Council be extended to strengthen its judicial capacity, for the purpose of establishing the ACJ as an Asian-Pacific referral body with quasi-judicial powers akin to a UN human rights treaty monitoring body, with concomitant powers of regional interpretation or consultation. The Asia-Pacific region at present lacks any higher means of appeal of legal

⁷ See Constitution of the Asia-Pacific Forum for National Human Rights Institutions, Section 11 (3): "Associate Members are those institutions which do not comply with the Paris Principles and are unlikely to do so within a reasonable period. Forum Councillors may determine that it would be in the interests of the Forum to admit a specific institution as an associate member of the Forum". Available at <http://www.asiapacificforum.net/about/membership.html>.

⁸ Terms of Reference of the Advisory Council of Jurists of the Asia-Pacific Forum of National Human Rights Institutions, Article 1, at http://www.asiapacificforum.net/jurists/terms_ref/terms_ref.pdf.

⁹ *Ibid.*, Article 2.

¹⁰ *Ibid.*, Article 3(3).

decision-making beyond the highest national courts, thus protecting national sovereignty from the scrutiny of international law.

A recent case in hand is that of the *People's Union for Civil Liberties v. Union of India*¹¹, which challenged the legislative competence of India's Prevention of Terrorism Act. The Supreme Court upheld the constitutionality of POTA in every instance, thus closing the door on the subject in India. However, NGOs remain united in their condemnation of the Act as an insidious and retrogressive attempt to rid India of all fundamental legal safeguards pertaining to due process and fair trial.¹² The decision by the Supreme Court has likewise been dismissed as a "concession" to a "panic-stricken state unable to handle terrorism through the normal legal process."¹³

In this instance, no recourse may be taken to any higher appellate court in Asia to challenge the Supreme Courts decision from the standpoint of India's obligations under international customary and treaty law. It is in cases such as these that national institutions should be expected to immediately refer cases to the Advisory Council. Whilst it is unrealistic in the current political climate to expect Asian states to cede sovereignty to a Council whose judgments would be legally binding, a referral body which may issue authoritative observations and recommendations would offer a firmer regional means of human rights protection than any that currently exist. Also, an appeal of a Supreme Court judgment on the basis of international obligations offers an alternate means of redress, as opposed to questioning such a judgment on the basis of former national jurisprudence.

Encouraging Regional Arrangements on Human Rights Issues of Common Concern

Requests to the ACJ may also be made at the unanimous decision of the APF on any issues of common concern, and it is this capacity that the Council have been most productive thus far. APHRN is of the view that collective responses present the most viable solutions to regional and global problems, and that the recommendations of the ACJ should be respected and acted upon by all States concerned. The matter of cross-border adjudication is intrinsic to the success of a regional arrangement for the Asia-Pacific region.

To date, the ACJ has published detailed reports on trafficking, child pornography, use of the death penalty in Asia, and the rule of law and terrorism. To take one example, the report on trafficking explains the significance of the UN Trafficking Protocol 2000¹⁴, and urges states to ratify in order to "prevent and combat trafficking, to assist the victims of trafficking and to promote cooperation among the party States to achieve these objectives."¹⁵ It also outlines the sources and methods of international law and other recommended principles. The January 2004 update of the report on the rule of law and terrorism presents a critical cross-examination of the inconsistency of Asian anti-terrorist legislation and its impact on human rights, challenged from the perspective of international obligations and safeguards. Unsurprisingly, few Asian countries can be congratulated on their present performances.¹⁶

¹¹ *People's Union of Civil Liberties and Anr. v. Union of India*, 2003 SOL Case No. 840, 16 December 2003.

¹² See SAHRDC, PREVENTION OF TERRORISM ORDINANCE: GOVERNMENT DECIDES TO PLAY JUDGE AND JURY (2001); AMNESTY INTERNATIONAL INDIA, SPECIAL SECURITY LEGISLATION AND HUMAN RIGHTS: A REPORT OF THE FOUR REGIONAL WORKSHOPS AND A CONFERENCE ON SECURITY LEGISLATION AND HUMAN RIGHTS (2002).

¹³ Delhi High Court Chief Justice Rajinder Sachar, quoted in *Pota Violates Basic Rights, Say Lawyers* ECONOMIC TIMES, 24 January 2004, at <http://economictimes.indiatimes.com/articleshow/442079.cms>.

¹⁴ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention Against Transnational Organized Crime, Report of the Ad Hoc Committee on the Elaboration of a Convention against transnational organized crime on the work of its first to eleventh sessions, UN Doc. A/55/383 (2000), Annex II.

¹⁵ Advisory Council Of Jurists, Consideration Of The Issue Of Trafficking: Final Report, 11 – 12 November 2002, India, December 2002, p. 5.

¹⁶ Advisory Council of Jurists, Reference on the Rule of Law in Countering Terrorism Addendum: Update to the Background Paper, January 2004.

These are notable contributions aimed at establishing a uniform regional approach to human rights concerns, and are commended by APHRN as such. However, a strengthening of the judicial capacity of the ACJ, as recommended above, would add considerable persuasion to their recommendations. Otherwise, as with all the examples given in this report, the Asia-Pacific region will continue to exist as the poor cousin of international community in the protection of universal human rights.