

台灣國家人權機構評估小組

台灣社會強烈支持設立國家人權機構。經過長達一週與公民團體、政府機構高階官員、政黨代表、司法院、監察院以及立法院的諮詢，這是本評估小組達成的結論。我們也非常榮幸有機會當面向副總統說明我們的初步發現。

為強化對人權的尊重，台灣過去已經採取幾項重要行動，包括將國際人權公約國內法化，並建立審查機制以監督其落實狀況。然而，正如同其他所有社會一樣，台灣仍然面臨重大的人權挑戰。本次任務的諮詢對象表示，他們相信國家人權機構將能協助他們處理迫切且持續存在的人權議題。

評估小組檢視了目前在台灣設立國家人權機構的三個方案，亦即：

- 獨立於既有政府架構之外
- 隸屬於總統府
- 成為監察院的一部分

我們考量了諮詢對象的看法、憲政與法律學者的建議、台灣獨特的五權憲法脈絡、現有資源最有效的運用，以及《巴黎原則》——設立國家人權機構的國際準則。

現今而言，上述三個方案無一符合巴黎原則。如果將國家人權機構設置於總統府，我們對其運作獨立性能否符合《巴黎原則》抱持懷疑。在我們的諮詢過程中，也沒有任何倡議將國家人權機構獨立設於政府結構之外的意見。

現在的監察院並不完全符合《巴黎原則》。然而我們一致認為，現階段在台灣設立國家人權機構的最好方案，乃是令其成為監察院的一部份。這表示監察院除了承擔現有的「善治」（good governance）職權，也將擁有人權職權，而且兩者同等重要。

為了確保設於監察院內的國家人權機構能夠完全符合《巴黎原則》的要求，需要針對《監察院組織法》與《監察法》進行大幅之修改。聯合國大會在1993年通過了《巴黎原則》，其中列出了國家人權機構必須符合的條件。未來修改《監察院組織法》與《監察法》時，下列要件應被考慮：

- 國家人權機構必須根據憲法或法律而設立；
- 必須要有廣泛的職權，包括保護及促進人權；
- 其職權必須涵蓋公民、政治、經濟、社會與文化權利以及社會中的所有部門；
- 國家人權機構之委員的選任必須反映社會的多元與多樣性，且過程必須公開透明；
- 委員選任標準必須要包含具備人權專業知識與經驗；
- 國家人權機構的獨立性應被法律保障；
- 國家人權機構的功能應包括：提供立法、行政、司法或其他部門建議；監督國際人權標準在國內的落實狀況；調查（investigating）或詢察（inquiring）

人權侵害案件；推動提供給政府官員與廣大社群的人權教育；以及受理個案申訴。

《巴黎原則》也明確規定國家人權機構必須讓所有人民易於接近與使用，並且在人權工作上應與公民社會合作，以增進其成效。

倘若將國家人權機構設立作為監察院的一部分，我們誠懇建議將監察院的英文名稱「Control Yuan」改譯為「Guardian Yuan」，據我們了解此舉不需更動中文名稱。

未來總統與立法院若設立了國家人權機構，那麼「亞太國家人權機構論壇」（Asia Pacific Forum, APF）以及「亞洲人權發展論壇」（FORUM-ASIA）的「亞洲國家人權委員會民間團體督導網絡」（ANNI），都非常願意在台灣需要的時候提供協助。

這次能夠擔任台灣國家人權機構評估小組的成員，我們備感榮幸。感謝人權公約施行監督聯盟的邀請，以及他們在任務過程中的有效支持。我們感受到在這裡遇見的每一個人為了強化台灣人民權利保障的真心付出，並且深受鼓舞。我們無比感激眾人慷慨付出的時間與周到，提供我們相關資訊及洞見。對於台灣蓬勃而充滿活力的公民社會中許多將保護、促進及倡導人權作為日常工作的成員，我們尤其留下深刻印象。

我們誠心希望，當台灣人民決心要設立國家人權機構之時，我們完成的評估報告將能提供你們些許助益。

Rosslyn Noonan

Sushil Pyakurel

Agantaranansa Juanda

TAIWAN NHRI ASSESSMENT MISSION

There is strong support for the establishment of a National Human Rights Institution (NHRI) in Taiwan.

This is the conclusion of the Taiwan NHRI Assessment Mission following week long consultations with civil society organisations, senior officials in government agencies, with representatives of political parties, with the Judicial Yuan, the Control Yuan and the Legislative Yuan.

We have also had a most welcome opportunity to brief the Vice-President on our initial findings.

Taiwan has taken major steps to strengthen respect for human rights by domesticating the International Covenants and human rights Conventions and by establishing a process for reviewing their implementation.

And yet, as in all societies, significant human rights challenges remain.

Those consulted told the Assessment Mission that a National Human Rights Institution would assist them to better tackle pressing and persistent the human rights issues.

The Assessment Mission reviewed the three options under consideration for establishing a NHRI here in Taiwan. The three options are:

- a stand-alone NHRI
- within the President's Office
- as part of the Control Yuan

We took account of the views of those consulted, the advice of constitutional and legal scholars, the unique Taiwan context with its five powers, the most efficient use of resources, and the 'Paris Principles' - the international guidelines for the establishment of a NHRI.

None of the three options currently meets 'Paris Principles'. It is doubtful whether a NHRI in the President's Office could ever meet the independence requirements of the 'Paris Principles'. There were no advocates amongst those we consulted for a stand-alone NHRI.

The Control Yuan is not fully compliant with the 'Paris Principles'. It is, nevertheless, our unanimous conclusion that the best option for establishing a national human rights institution at this time is to make it part of the Control Yuan. This means that the Control Yuan would have both a good governance mandate as at present, and a human rights mandate, both of equal significance.

Substantial changes to ensure full compliance with the 'Paris Principles' of a national human rights institution within the Control Yuan are required to the Organic Law of the Control Yuan and to the Control Act.

In 1993 the United Nations General Assembly adopted the 'Paris Principles', which set out the required elements for a National Human Rights Institution.

These are elements that will have to be considered in the changes to the Control Yuan Organic Law and the Control Act:

- the NHRI must be established in the Constitution or by law
- it must have a broad mandate both to protect and promote human rights
- the mandate must cover civil and political, economic, social and cultural rights and all sectors of society
- appointments to the NHRI must reflect the pluralism or diversity of the society and be made through an open and transparent process
- criteria for the appointments must include human rights expertise and experience
- the independence of the NHRI should be guaranteed in law
- the functions of the NHRI include providing advice to the legislature, to government, to the judiciary and to others; monitoring implementation of the international human rights standards; investigating or inquiring into violations of human rights; encouraging the provision of human rights education for government official and the wider community; and dealing complaints.

The 'Paris Principles' also stipulate that a NHRI must be accessible to all people and should cooperate with civil society on human rights activities to extend its effectiveness.

Should a National Human Rights Institution be established as part of the Control Yuan, we would respectfully suggest that consideration be given to interpreting in English the Mandarin Chinese term for the Control Yuan as "Guardian Yuan", which we understand needs no change to the original Chinese.

Should the President and the Legislative Yuan proceed to establish a National Human Rights Institution, the Asia Pacific Forum of National Human Rights Institutions (APF) and Forum Asia ANNI are committed to assisting if requested.

It has been a privilege to serve on the Taiwan NHRI Assessment Mission. We thank Covenants Watch for inviting us and supporting the Mission so effectively. We have been encouraged by the genuine commitment of everyone we met to strengthening human rights for all the people of Taiwan. We are most appreciative of how generous people have been with their time, the thoughtfulness with which they have provided

us with information and insights. We have been particularly impressed with the vital and energetic members of civil society who daily work to protect and promote and to advocate for human rights.

We hope that our report when it is finalised will be of some value to the people of Taiwan as you decide to establish a national human rights institution.

Roslyn Noonan

Sushil Pyakurel

Agantaranansa Juanda