



ASIA PACIFIC FORUM
ADVANCING HUMAN RIGHTS IN OUR REGION



TAIWAN NHRI ASSESSMENT REPORT 2017



Evaluation of the progress made in establishing a Paris Principles compliant NHRI for Taiwan and the desirability and feasibility of the options under consideration



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THANKS FROM US

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 are grateful to the Presidential Office Human Rights Consultative Committee for its assistance with translations.

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 benefitted enormously from the thorough preparation of the Government agencies and the robust consideration they had given to the questions under consideration by the task force.

The Legislative and Judicial Yuan were equally informative. And the Control Yuan set aside half a day to enable us to have wide-ranging discussions and explore in-depth the raft of complexities in the establishment of a NHRI in Taiwan. We are most grateful and express our appreciation and thanks to the Presidents of Judicial and Control Yuans, and the Secretary General of Legislative Yuan.

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.

Especial thanks to Vice-President Chen who made time in his busy schedule for a detailed discussion of the options under consideration.

We hope that our report when it is finalised will be of value to the people of Taiwan and contribute constructively to the decision about whether to establish a national human rights institution and if so in what form.

Rosslyn Noonan
APF



ASIA PACIFIC FORUM
ADVANCING HUMAN RIGHTS IN OUR REGION

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ABOUT US

Asia Pacific Forum of National Human Rights Institutions (APF)

The Asia Pacific Forum of National Human Rights Institutions (APF) is a membership organisation representing independent national human rights institutions (NHRIs) across Asia and the Pacific that have been established in compliance with the minimum standards of the United Nations General Assembly-endorsed 'Principles relating to the status of National Institutions' (the Paris Principles). It is an independent, non-profit organisation that supports, through regional cooperation, the establishment and development of national institutions to protect and promote the human rights of the peoples of our region.

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Rosslyn Noonan is an Expert NHRI Consultant to the APF. She is a former New Zealand Chief Human Rights Commissioner (2001–2011) and former Chairperson of the International Coordinating Committee for National Institutions (ICC), now the Global Alliance of NHRIS (GANHRI) 2010–2012. In her capacity as Chairperson, Ms Noonan had responsibility to oversee the Sub-Committee on Accreditation that assesses national human rights institutions for compliance with the Paris Principles.

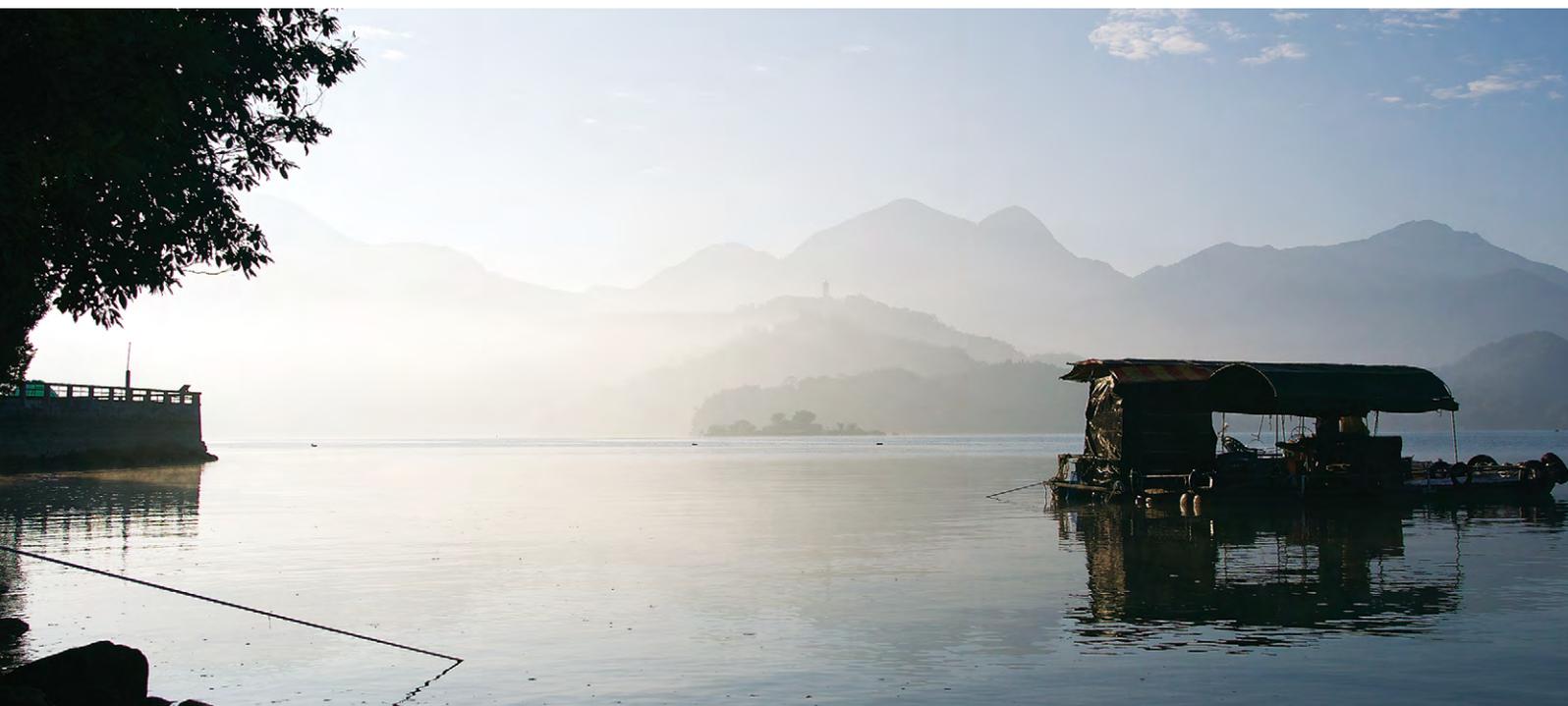
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Asian Forum for Human Rights and Development (FORUM-ASIA)

FORUM-ASIA is a network of 58 members in 19 countries, as of January 2017, across Asia. It was founded in 1991 in Manila, the Philippines. Its Regional Secretariat was established in Bangkok, Thailand in 1992. Since then, offices have been opened in Geneva, Jakarta, and Kathmandu.

FORUM-ASIA works to promote and protect human rights, including the right to development, through collaboration and cooperation among human rights organisations and defenders in Asia and beyond.

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Asian NGO Network on National Human Rights Institutions (ANNI)

ANNI was established in December 2006. It is a network of Asian non-governmental organisations (NGOs) and human rights defenders (HRDs) that advocate for the strengthening of Asian National Human Rights Institutions (NHRIs), so that they are able to better promote and protect human rights. ANNI also advocates for the improved compliance of Asian NHRIs both in law and practice with international standards, including the Paris Principles and General Observations of the Sub-Committee on Accreditation (SCA) of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC). The Asian Forum for Human Rights and Development (FORUM-ASIA) functions as the Secretariat of ANNI.

Agantaranansa Juanda was Programme Coordinator at FORUM-ASIA, responsible for the overall coordination of ANNI work. He has led the development of new ANNI initiatives with an emphasis on cordial and strategic working relationship with Asian NHRIs and intergovernmental bodies (i.e., ASEAN and United Nations) on behalf of FORUM-ASIA and ANNI. He has also been responsible for maintaining close contacts and engagement with relevant networks of civil society organisations, diplomatic missions, media, and other relevant stakeholders.

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Sushil Pyakurel, a life-long democracy and human rights fighter/worker, he was the founder of various human rights bodies and organizations, including the human rights organization INSEC and the Forum for the Protection of Human Rights, the first human rights organization in the Nepal. He was also an advocate for the establishment of a national human rights institution in Nepal and one of its founding members. In 2010 he was awarded the Gwangju Prize for Human Rights. In 2017 he was appointed an Adviser to ANNI.

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ABBREVIATIONS

APF	Asia Pacific Forum of National Human Rights Institutions
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	Convention on the Elimination of Racial Discrimination
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CSO	Civil society Organisation
GANHRI	Global Alliance of National Human Rights Institutions
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, social and Cultural Rights
NGO	Non-governmental organisation
NHRI	national human rights institution
'Paris Principles'	Principles relating to the status of National Institution for the Promotion and Protection of Human Rights
POHRCC	Presidential Office Human Rights Consultative Committee
UDHR	Universal Declaration on Human Rights

EXECUTIVE SUMMARY AND RECOMMENDATIONS

Taiwan's civil society organisations have been advocating for the establishment of a National Human Rights Institution (NHRI) since 1999. In 2014, a taskforce formed within the Presidential Office Human Rights Consultative Committee (POHRCC) concluded that Taiwan should establish a NHRI. At that time four options were available, with three options identified by the taskforce and Control Yuan submitted a separate proposal to the POHRCC.

President Tsai committed to establishing a NHRI during the election campaign of 2016 and, more recently, undertook to make a decision by the end of 2017.

To assist the President with that decision and following discussions with the POHRCC, Covenants Watch (Taiwan) invited Ms. Rosslyn Noonan of the Asia Pacific Forum of National Human Rights Institutions (APF) to lead a task force to Taiwan for a one-week visit to conduct an assessment of the on-going process of establishing a National Human Rights Institution (NHRI).

Members of the task force came under the auspices of the Asian Forum for Human Rights and Development (FORUM-ASIA), the Asian NGO Network on NHRIs (ANNI), and the Asia Pacific Forum of NHRIs (APF).

Task force members, in addition to Ms Noonan, were Mr Sushil Pyakurel, a foundation member of the Nepal Human Rights Commission and Mr Agantaranansa Juanda, at that time serving in his capacity as Programme Coordinator of ANNI.

The Task Force members acknowledge that:

- (i) the status of Taiwan under international law is contested by the People's Republic of China (PRC) and the Republic of China (ROC)
- (ii) the authors of the report explicitly do not make any comment on this issue, and
- (iii) the use of the terminology NHRI in the report should not be construed as endorsing Taiwan as a nation state.

Drawing on their extensive experience with NHRIs worldwide, the task force members were asked to evaluate the views of key stakeholders on the desirability and feasibility of setting up such an institution; they were also asked to provide expert opinions on the several proposals that were currently under consideration in terms of compatibility with the Paris Principles.

During the week in Taiwan, the President's Office invited the task force to provide a briefing to the POHRCC, hosted by Vice President Chen.

While in Taiwan, the task force consulted with:

- government agencies including Ministry of Education, Ministry of the Interior, Ministry of Justice, and Gender Equality Department of Executive Yuan
- the Legislative Yuan, the Judicial Yuan and the Control Yuan
- members of political parties
- civil society groups and organisations
- members of academia and the legal profession.

They also:

- provided an initial briefing at the end of the visit to the Vice President and members of the POHRCC
- held a press conference summarising initial conclusions of the task force.

In arriving at the conclusions and recommendations, the task force 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.

CONCLUSIONS

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

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

As in all societies, significant human rights challenges remain.

Of the four options for an NHRI under discussion, each would face different difficulties/challenges in meeting the Paris Principles.

Two of the options – based in the President's office or part of the Executive Yuan – would face particular challenges to meet the fundamental independence requirements of the Paris Principles.

Establishing a stand-alone NHRI structure outside of Taiwan's five powers structure presents insurmountable constitutional challenges, including in relation to its status relative to the five Yuans and government agencies more generally.

The Control Yuan currently has some but not all of the elements required by the Paris Principles. In our assessment it would not be accredited as fully compliant. In order to be fully compliant, substantial changes are required to its legislation.

It is the unanimous conclusion of the task-force that the best option for establishing a national human rights institution in a timely manner is to make it part of the Control Yuan and to provide for a fully compliant Paris Principles institution by amendments to the Organic Law of the Control Yuan and to the Control Act.

In arriving at that conclusion the task-force recognises that the 'Paris Principles' are very broad precisely because each country has its own unique Constitution and legal foundations. Taiwan in establishing a national human rights institution as others have done will, have to:

- improvise
- extend a good-will interpretation of the Constitution, conforming to its core values to protect and promote human rights
- through the definition of its competencies, define the interface between the NHRI with other governmental bodies, so as to conform to the constitutional structure regarding division of powers
- in this last regard, although the NHRI seeks to provide authoritative opinions with regard to the legislative, judicial, and executive functions of the state, the advisory nature of its opinions sets a boundary to its powers. Therefore the actions of an NHRI could rarely be considered unconstitutional.

RECOMMENDATIONS

The Taiwan NHRI Assessment Task Force recommends that:

1. Taiwan establish a fully Paris Principles compliant national human rights institution.
2. The **Control Yuan** should be provided with the mandate, functions and powers necessary to become Taiwan's national human rights institution.
3. Changes be made to the Organic Law of the Control Yuan and to the Control Act to provide the Control Yuan with both a **good governance and audit mandate** as at present, and a **human rights mandate, of equal significance**.
4. The human rights **mandate** for the Control Yuan must specify the duty to both protect and promote human rights; and it must cover civil and political, economic, social and cultural rights, all sectors of society and all people in Taiwan.
5. The law should ensure that the Taiwan national human rights institution has the powers to fulfil all the **functions** required of a Paris Principles compliant institution including 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 officials and the wider community; and dealing with complaints.
6. The law should further require that the **internal structures** and **ways of working** of the Control Yuan fully reflect the equal status of the good governance and human rights mandates and functions.
7. A review the Organic Law of the Control Yuan and the Control Act to determine whether further **guarantees of independence** should be included in order to meet criteria under Paris Principles including appointments and dismissal provisions, and a specific duty to act independently.
8. **Appointments procedures** to the Control Yuan for both good governance and human rights mandates should be provided for in law and be **open and transparent**.
9. Appointments and appointment criteria must reflect the **pluralism and diversity** of Taiwanese society.
10. Criteria for half of the members of the Control Yuan must include **human rights expertise and experience**.
11. **Resourcing** of the human rights mandate should be sufficient to allow it to be accessible to people throughout Taiwan by the most efficient and effective means.
12. In fulfilling its human rights mandate and carrying out its functions, the Taiwan national human rights institution must have regard to the Paris Principles expectation that a NHRI will **consult and cooperate with Non-Governmental Organisations (NGOs) and Civil Society Organisations (CSOs)**.

INTRODUCTION

BACKGROUND

1. Taiwan's civil society organisations have been advocating for the establishment of a National Human Rights Institution (NHRI) since 1999.
2. In 2014, a taskforce formed within the Presidential Office Human Rights Consultative Committee (POHRCC) concluded that Taiwan should establish a NHRI. At that time four options were identified.
3. President Tsai committed to establishing a NHRI during the election campaign of 2016 and, more recently, undertook to make a decision by the end of 2017.
4. To assist the President with that decision and following discussions with the POHRCC, Covenants Watch (Taiwan) invited Ms. Rosslyn Noonan of the Asia Pacific Forum of National Human Rights Institutions (APF) to lead a task force to Taiwan for a one-week visit to conduct an assessment of the on-going process of establishing a National Human Rights Institution (NHRI). The visit took place from 23 to 28 July 2017.
5. Members of the task force came under the auspices of the Asian Forum for Human Rights and Development (FORUM-ASIA), the Asian NGO Network on NHRIs (ANNI), and the Asia Pacific Forum of NHRIs (APF).
6. Task force members, in addition to Ms Noonan, were Mr Sushil Pyakurel, a foundation member of the Nepal Human Rights Commission and Mr Agantaranansa Juanda, from FORUM-ASIA/ANNI.
7. Drawing on their extensive experience with NHRIs worldwide, the task force members were asked to evaluate the views of key stakeholders on the desirability and feasibility of setting up such an institution; they were also asked to provide expert opinions on the several proposals that were currently under consideration in terms of compatibility with the Paris Principles.

METHODOLOGY

8. While in Taiwan, the task force consulted with:
 - government agencies
 - the Legislative Yuan, the Judicial Yuan and the Control Yuan
 - members of political parties
 - civil society groups and organisations
 - members of academia and the legal profession.
9. They also:
 - provided an initial briefing at the end of the visit to the Vice President and members of the POHRCC
 - held a press conference summarising initial conclusions of the task force.
10. Desktop research was conducted, reviewing a range of resources. Key documents included the Constitution of the Republic of China (Taiwan); background information of the Legislative Yuan, the Judicial Yuan and the Control Yuan; the Implementation Act 2009 and reports relating to the examination of Taiwan's implementation of the International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights; as well as documents provided by the government agencies and civil society organisations we met with.
11. A full list of meetings/consultations (Appendix 2) and a list of documents (Appendix 4) are attached to this report.

NATIONAL HUMAN RIGHTS INSTITUTIONS

WHAT IS A NATIONAL HUMAN RIGHTS INSTITUTION?

12. NHRIs are independent state institutions dedicated to promoting and protecting human rights in a country. An NHRI is a structure established by the state but independent of government in the same way as the judiciary.
13. By the state, we mean all the elements that form the nation of Taiwan and are essential to its functioning: parliament, government and its agencies, the courts, the Yuans, and all the layers of local government. Government is the cabinet and the ministries, departments and other agencies that are responsible to the cabinet ministers.
14. NHRIs must be established in the constitution or by a specific law. They have to be able to work independently of government, though funded by government.
15. An NHRI has a broad mandate to promote and protect human rights. It advises the parliament, the government and others on how best to strengthen human rights for the people of its nation. It monitors how the government implements human rights standards. It is accessible to everyone, can deal with complaints, investigate human rights violations and make recommendations.
16. NHRIs are a bridge between the international human rights treaties that a state ratifies and making those commitments real for everyone within that state.
17. A total of 110 countries have an NHRI. Across Asia Pacific there are 24 accredited national human rights institutions with a further small group in development.

INTERNATIONAL STANDARDS FOR NHRIs

18. To gain international recognition and credibility, NHRIs are required to comply with a set of minimum UN standards. These were adopted by the United Nations General Assembly in the 'Principles relating to the status of National Institutions for the Promotion and Protection of Human Rights' (the Paris Principles).¹ The Paris Principles require:
 - **establishment** in the **constitution** or by law
 - a **broad mandate** based on universal human rights standards
 - responsibility to both **promote and protect human rights**
 - **independence** from and autonomous of government
 - **pluralism**, with senior positions and staff that broadly reflect the different groups in the society
 - **adequate resources** provided by the government, and
 - **powers of investigation**.
19. The Paris Principles also set out the functions and ways of working of NHRIs, including:
 - providing advice and guidance to parliament, government and its agencies
 - investigating situations of human rights violations
 - monitoring government implementation of human rights standards

¹ General Assembly resolution 48/134 of 20 December 1993. See Annex II.

- undertaking or advising on human rights education
- contributing to the development of human rights jurisprudence by intervening in court cases and/or acting as *amicus curiae*
- advocating for ratification of international human rights treaties
- working with NGOs and civil society
- being accessible to all, and
- in most cases, being able to receive complaints and use the range of dispute resolution tools (for example mediation, conciliation, referral, provision of information and advice) to resolve them.

TYPES OF NHRI

20. Except in rare circumstances, a Member state of the United Nations can only have one internationally recognised NHRI. Current exceptions are the Independent Human Rights Commissions of Palestine and Afghanistan; and Great Britain where Northern Ireland and Scotland have accredited Human Rights Commissions in addition to the Equality and Human Rights Commission of the United Kingdom. In those cases special conditions apply.
21. Each country is free to decide what particular type of human rights institution it should have. There is no single model. This decision should be informed by an examination of the country's existing human rights protection framework, legal, political and cultural systems, and the availability of technical and financial resources.
22. There are four main types of NHRI:

1. Human Rights Commissions

Human Rights Commissions have a broad range of roles which may include:

- promoting human rights education and awareness of human rights with the government and the community
 - advising government in relation to human rights policies and programmes
 - advising the legislature to help ensure that drafts and existing laws and regulations are compatible with human rights
 - contributing to court proceedings that raise human rights issues
 - undertaking investigations or inquiries into human rights issues and challenges
 - contributing to the work of the UN human rights mechanisms
 - receiving and determining human rights-related complaints from individuals, including through mediation and conciliation, and
 - observing and monitoring places of detention.
23. Human rights commissions are generally headed by a chief commissioner/chairperson/president and two or more commissioners who are appointed for a fixed term. Commissioners are the public advocates for the promotion and protection of human rights. Most NHRIs in Asia Pacific have been established based on this model.

2. Ombudsman's office with a human rights mandate

Ombudsman's offices are generally dedicated to supporting good administration. Most have powers of investigation, enabling them to look into alleged instances of maladministration. When they also have a broad mandate to promote and protect human rights, they qualify as a NHRI. In parts of Europe and Central and South America this is the most common model.

A broad human rights mandate brings with it the same functions as those of a human rights commission, in particular the requirement to actively promote human rights, monitor and provide advice and guidance on implementation of human rights commitments.

Across Asia and the Pacific, the Samoan Ombudsman's Office and the Timor-Leste Office of the Provedor are examples of an Ombudsman's Office with a full human rights mandate and with the functions set out in the Paris Principles.

As the UN points out, hybrid institutions can provide a 'one-stop' service across a range of issues.² They can also allow for resources to be consolidated in a single institution.

Ombudsman's offices are usually headed by a single office-holder (the ombudsman) who is appointed for a fixed term. They may, however, include a chief ombudsman and one or two more ombudsmen, depending on the workload. In some places, such as Samoa and Timor-Leste, deputy ombudsmen are allocated particular areas of responsibility.

3. Advisory and consultative bodies

Advisory and consultative bodies are institutions that provide in-depth advice and recommendations to government on a range of human rights issues. These bodies are often limited in their mandate and usually do not have specific powers to investigate complaints of alleged discrimination or breaches of human rights. Their role is usually limited to promotional programmes and activities. The French National Consultative Commission on Human Rights is an example of a consultative body.

4. Research bodies

Research bodies are often described as human rights 'think tanks'. They tend to have an academic focus, which enables them to make expert contributions to the study of particular human rights issues. Like advisory and consultative bodies, research bodies generally lack the ability to receive and determine human rights-related complaints from individuals. The first incarnation of the Danish Institute for Human Rights was an example of a research body model, although now it has been transformed into a broad-based NHRI.

² Refer to United Nations, *National Human Rights Institutions: History, Principles, Roles and Responsibilities*, (New York & Geneva, 2010) at page 18. Available at: www.ohchr.org/Documents/Publications/PTS-4Rev1-NHRI_en.pdf.

TAIWAN HUMAN RIGHTS CONTEXT

24. Despite Taiwan's exclusion from the United Nations, significant progress has been made to domesticate international human rights standards. The innovative review process introduced to assess implementation of those international standards parallels that of the Treaty Bodies. It engages international human rights experts. And because the experts meet, receive submissions and undertake their examination within Taiwan, it arguably has more impact than the Treaty Bodies meeting in Geneva or New York. The *Implementation Act 2009* assigned explicit human rights responsibilities to government agencies.

CONSTITUTIONAL FRAMEWORK

25. The Constitution of the Republic of China (Taiwan), adopted in 1947 and amended in 2005, establishes the structures of the State, including the establishment of the National Assembly; specifies the rights, freedoms and duties of its citizens; sets out the presidential powers, the powers of central and local government and the system of local government; covers fundamental national policies; and makes certain provisions for 'frontier groups'.
26. The structure of the Taiwan Constitution is quite unique in that it identifies five separate pillars of the state. Those pillars are the Executive Yuan, the Legislative Yuan, the Judicial Yuan, the Examination Yuan and the Control Yuan.
27. Article 7 of the 2005 Additional Articles of the Constitution provides that the Control Yuan shall be "the highest control body of the State and shall exercise the powers of impeachment, censure and audit; and the pertinent provisions of Article 90 and Article 94 of the Constitution concerning the exercise of the power of consent shall not apply" .
28. It stipulates 29 as the number of members, each with a term of six years. The nominated members require the consent of the Legislative Yuan to be appointed by the President of the Republic. The Additional Articles place a duty to act independently on them:

"Members of the Control Yuan shall be beyond party affiliation and independently exercise their powers and discharge their responsibilities in accordance with the law".

RIGHTS AND DUTIES OF THE PEOPLE

29. Chapter II of the Constitution provides for the rights, freedoms and duties the citizens. Article 7 is explicit that:

"All citizens ... irrespective of sex, religion, race, class or party affiliation, shall be equal before the law".
30. Chapter II goes on to spell out an extensive range of civil and political rights as well as two economic and social rights: the right to work and education. Economic, social and cultural rights are further dealt with in Chapter XIII on Fundamental National Policies. Duties of the citizens, for example in relation to the right to vote and the right to education are also specified.
31. What the Constitution does not appear to cover is the extent to which the rights and freedoms guaranteed to citizens also apply to residents or others, such as migrant workers, who are not citizens.

LEGISLATIVE FRAMEWORK

32. The Constitutional provisions establishing the Control Yuan and the rights, freedoms and duties of citizens are underpinned by legislation which details their implementation. In fact Taiwan has a comprehensive legislative framework governing all relevant aspects of society and business.
33. A brief search of the Laws and Regulations Database of The Republic of China reveals over 23 pieces of legislation that make specific reference in their titles to protection of a set of rights. While a number refer to business and matters such as copyright and trademarks, others relate to human rights. The *Indigenous Peoples Employment Rights Protection Act* and the *HIV Infection Control and Patients Rights Protection Act* are two such examples.
34. Many more pieces of legislation, without reference to rights in their titles, are responsible for making human rights real in people's lives. An obvious illustration is the *Primary and Junior High School Act*, most recently amended in 2016, which together with the *Compulsory Education Act* provides for free, compulsory education from age 6 to 15.

“INTERNATIONAL” HUMAN RIGHTS COMMITMENTS

35. In 2000 then newly elected President Chen Shui-bian advocated ratification of the International Covenants on Civil and Political Rights (ICCPR) and on Economic, Social and Cultural Rights (ICESCR); and of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). CEDAW was ratified in 2007, the two international Covenants in 2009. Since then Taiwan has ratified the Convention on the Rights of the Child (CRC) and the Convention on the Rights of Persons with Disabilities (CRPD).
36. Following ratification the Covenants and Conventions have been domesticated into national law in a series of Implementation Acts. The Implementation Acts have made explicit the requirement of government agencies to incorporate the human rights standards into their areas of responsibility.
37. When spurned formal recognition by the United Nations (UN) and therefore access to its Treaty Bodies, Taiwan legislated for a review system based on that of the UN, involving international experts, requiring the Government to report formally every four years on its implementation of each of the Covenants and Conventions. The review takes place in Taiwan and, as well as the government reports, has generated impressive civil society participation.

CIVIL SOCIETY

38. Taiwan's transformation from authoritarianism to a democracy owes much to its diverse, active, civil society. It is civil society that has consistently advocated for strengthening of Taiwan's human rights performance, including for the establishment of a national human rights institution.

MEDIA

39. Taiwan has a free and very diverse media, including television, radio, newspapers and online news and commentary services.

CONSULTATIONS

40. The NHRI Assessment Task Force met with representatives of civil society organisations, constitutional and legal scholars, senior officials in government agencies, with representatives of political parties, with the Judicial Yuan, the Control Yuan and the Legislative Yuan. (See Appendix 2: Consultations).
41. The consultations were wide-ranging with four fundamental questions explored in detail:
 1. Is a national human rights institution needed in Taiwan? What value would it add?
 2. If established, what roles and responsibilities should a NHRI have?
 3. What type of NHRI would best carry out these roles and responsibilities, taking into account the unique Taiwanese constitutional arrangements, resource constraints and other challenges?
 4. Of the four options that have been proposed as possibilities in the Taiwan context, which would be the most appropriate, effective and efficient?

Is a national human rights institution needed in Taiwan? What value would it add?

42. As the section on the Taiwan Human Rights Context explains, despite Taiwan's exclusion from the United Nations, significant progress has been made to domesticate international human rights standards. The innovative review process introduced to assess implementation of those international standards parallels that of the Treaty Bodies. The Implementation Act 2009 also assigned explicit human rights responsibilities to government agencies. And more reforms are underway to further strengthen human rights.
43. But during the consultations civil society organisations agencies gave accounts of a raft of significant human rights issues that demonstrate the extent to which the human rights standards are ignored in practice.
44. Forced evictions, the rights of Indigenous Peoples, the rights of disabled people, those of migrant workers, and those of children, particularly children with disabilities and including unequal access to quality education, were amongst the issues most frequently and forcefully raised with Task Force members. The death penalty and the conditions of those in detention were also of concern.
45. There was acknowledgement from all those consulted, including government agencies and representatives of the Yuans, that there was currently no national human rights coordination, no central responsibility for promoting respect for and understanding of human rights across all sectors of Taiwan society, no institution with oversight and a mandate to monitor implementation of the human rights standards that Taiwan has legally committed to or to investigate and report on systemic human rights violations.
46. Further a number said they would welcome access to authoritative advice from a national human rights institution.
47. Some concerns were expressed that the mandate and functions of an NHRI might duplicate or overlap with those of existing bodies and might take already constrained resources away from them.
48. The Control Yuan stressed its role in protecting human rights, which was duly recognized by the taskforce. However, the current mandate, functions and ways of working of the Control Yuan do not fully comply with the Paris Principles.

If established, what roles and responsibilities should a NHRI have?

49. The 'Paris Principles' set out the legal framework for a national human rights institution to be effective nationally and to be recognised and accredited internationally.
50. The foundation of that legal framework is incorporation of the NHRI in the Constitution or its establishment by an Act of Parliament. Given the current difficulties in constitutional reform, an Act to establish the NHRI seems more feasible, and the challenge is to set it up within the 5-power constitutional framework. The 'Paris Principles' require the NHRI to have a 'broad mandate' covering civil and political, economic, social and cultural rights; and all sectors of society and every person in Taiwan. Further it must be mandated with the competence to both protect and promote human rights.
51. An analysis of the issues raised during the consultations reveals strong support for both the promotion and protection mandate. The consultations also demonstrated considerable agreement on what functions Taiwan's NHRI should have. The roles and responsibilities most consistently proposed included
- Monitoring of implementation of the universal human rights standards that Taiwan has domesticated
 - Investigating, researching and reporting on systemic human rights issues
 - Being an advocate and an authoritative source of advice and guidance on human rights in legislation, policy development and public sector practices
 - Actively promoting the development of a culture of human rights to all the people of Taiwan through awareness-raising, provision of information and education
52. These functions closely reflect those in the 'Paris Principles':
- A national institution shall, inter alia, have the following responsibilities:
- (a) To submit to the Government, Parliament and any other competent body, on an advisory basis ... on any matters concerning the promotion and protection of human rights....
- (i) Any legislative or administrative provisions, as well as provisions relating to judicial organizations, intended to preserve and extend the protection of human rights; in that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights; it shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;
- (ii) Any situation of violation of human rights which it decides to take up;
- (iii) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;
- (iv) Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government....
53. The 'Paris Principles' go on to specify
- (b) To promote and ensure the harmonization of national legislation regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;
- (c) To encourage ratification of the above mentioned instruments or accession to those instruments, and to ensure their implementation;
-

- (f) To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;
 - (g) To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.
54. In summary, to fulfil its broad mandate to protect and promote humanrights in accordance with the Paris Principles, the Taiwan National Human Rights Institution should have the following functions:
- provision of human rights advice
 - review of legislation and policy
 - monitoring of State implementation of human rights commitments
 - thematic and systemic inquiries and investigations
 - detention monitoring
 - complaints handling and mediation
 - independent engagement with experts reviewing Taiwan compliance with domesticated human rights Covenants and Conventions
 - human rights education
 - power to bring proceedings before the Court or be appointed as intervener or *amicus curiae*.

What type of NHRI would be most appropriate to carry out these roles and responsibilities, taking into account the unique Taiwan Constitutional arrangements, resource constraints and other challenges? Of the four options that have been proposed as possibilities in the Taiwan context, which would be the most appropriate, effective and efficient?

55. The Task Force members noted that there has been extensive debate amongst human rights non-governmental organisations and most recently by the Presidential Office Human Rights Consultative Committee (POHRCC) about the most appropriate form of NHRI for Taiwan.
56. In terms of form, two types have been under consideration: a Human Rights Commission structure or an Ombudsman’s Office. The more critical question has been where in Taiwan’s constitutional structure should the NHRI, whatever its form, be placed.
57. Four options have been canvassed:
- a stand-alone Human Rights Commission
 - a Human Rights Commission within the Presidential Office
 - a Human Rights Commission as part of the Executive Yuan
 - extension of the mandate of the Control Yuan to cover human rights on an equal basis with its good governance/maladministration mandate.
58. In view of Taiwan’s unique constitutional provision of five separate powers or branches of Government – Legislative Yuan, Judicial Yuan, Executive Yuan, Control Yuan, Examination Yuan – and on the basis of the advice provided to the Task Force by constitutional and legal scholars, the Task Force concluded that there are insurmountable constitutional barriers to a stand-alone Human Rights Commission. Without amending the Constitution, it is difficult to see how it could have the powers to fulfil the broad mandate required by the ‘Paris Principles’ or have the necessary status and the respect of all levels of government and society.

59. An NHRI is part of the State, but it is not part of the Government. Although funded by Government, the 'Paris Principles require it to be independent of Government. Indeed, a question frequently raised in the consultations was how the independence of a NHRI can be ensured.
60. Guarantees of independence have to be incorporated in legislation. If established within the Presidential Office or as part of the Executive Yuan, those guarantees would have to be very strong to counteract any possibility of political influence in a situation where there is a degree of accountability to the Executive or the President. Some level of independence may be achievable, as for example with the three "independent commissions" within the Executive Yuan – the Central Election Commission, National Communications Commission and Fair Trade Commission. But a Human Rights Commission that was ultimately accountable to the Executive or to the President would be more vulnerable to political influence than a Constitutional body and may not be perceived by the general public as being independent, and perceptions impact on credibility.
61. After considering all the relevant factors, the Task Force members concluded that extending the mandate of the Control Yuan provided the best option for establishing a fully 'Paris Principles' compliant NHRI for Taiwan. In making the recommendation the Task Force affirms the view that Ombudsman Offices can provide a 'one-stop' service across a range of issues.³ By allowing for resources to be consolidated in a single institution, they also provide potentially the most cost-effective option.
62. The Control Yuan is one of the five branches of the State established by the Constitution, the highest status available to a NHRI. The *Control Act* and the *Organic Law of the Control Yuan* specify its mandate and functions. Other related legislation includes The *Organic Act of the Control Yuan Committees*. Within the Control Yuan, the Committee on Human Rights Protection indicates a current human rights dimension its work. We heard of a number of ways in which the internal structures of the Control Yuan could be developed to provide the basis for the 'Paris Principles' compliant NHRI.
63. The various Acts covering the Control Yuan provide some, but not all, of the elements required of an NHRI. Examination of these and related provisions reveal that substantial strengthening of the legislation will be necessary to ensure full compliance with the 'Paris Principles'.
64. The legislation must provide:
 - an explicit, broad human rights mandate
 - competence to both promote and protect human rights
 - coverage of all sectors of society
 - extended range of functions
 - specific human rights criteria for the appointment of members to the Control Yuan and to reflect the plurality and diversity
 - to strengthen independence, an appointment process that is open and transparent, provides for national advertising of the positions and includes human rights experts and activists on the panel assessing applications and recommending appointments to the President, and
 - that the NHRI reports to the Legislative Yuan on an annual basis.
65. Further, consideration must be given to the internal operational structures of the Control Yuan to make clear the equal status of the human rights mandate with the Control Yuan's traditional responsibilities, including that of the National Audit Office.

³ Refer to United Nations, *National Human Rights Institutions: History, Principles, Roles and Responsibilities*, (New York & Geneva, 2010) at page 18. Available at: www.ohchr.org/Documents/Publications/PTS-4Rev1-NHRI_en.pdf.

66. Finally, the Paris Principles stipulate that national human rights institutions shall:

“In view of the fundamental role played by the non-governmental organizations in expanding the work of the national institutions, develop relations with the non-governmental organizations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas”.

67. There are key differences between the current Control Yuan mandate and that of a human rights mandate. Firstly, the current mandate of the Control Yuan members focuses very much on misconduct of civil servants, mostly according to the prevalent laws and codes, whereas the human rights commissioners should explore whether the laws are compatible with international human rights standards. The case of evicting unlawful residents on public land may illustrate this difference.

68. Secondly, the qualifications most relevant to the two functions may differ: while the Ombudsman function is best performed by someone familiar with governmental operations and capable of detecting errors and anomalies. Human rights commissioners should be more aware and sympathetic with the less privileged populations, and come from a diverse background beyond the requirements in Control Yuan's Organic Act.

69. Thirdly an Ombudsman should be familiar with domestic law while human rights commissioners should be familiar with domestic law and well versed in international human rights standards as well as the principles and reasoning behind them.

SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

70. Taiwan is to be commended for having taken major steps to strengthen respect for human rights by domesticating the International Covenants and human rights Conventions and by introducing an innovative process engaging overseas experts to review their implementation. All the government agencies the Task Force met with were aware of the human rights standards relevant to their responsibilities. It was unclear however to what extent those standards were fully integrated into their policy development and practices.
71. As in all societies, significant human rights challenges remain. Those consulted – civil society organisations but also a number of government agencies – told the Assessment Task Force that a National Human Rights Institution would assist them to better tackle pressing and persistent the human rights issues.
72. There is strong support for the establishment of a National Human Rights Institution (NHRI) in Taiwan.
73. Of the four options for a NHRI that have been under discussion in Taiwan, in the assessment of the Task Force, none currently fully meets the Paris Principles.
74. Two of the options – based in the President's office or part of the Executive – would have difficulty meeting the fundamental independence requirements of the Paris Principles.
75. Establishing a stand-alone NHRI structure outside of Taiwan's five powers structure presents insurmountable constitutional challenges, including in relation to its status relative to the five Yuans and government agencies more generally.
76. The Control Yuan currently has some but not all of the elements required by the Paris Principles. Substantial changes are required to its legislation to make it fully compliant with them.
77. It is the unanimous conclusion of the task-force that the best option for establishing a national human rights institution in a timely manner is to make it part of the Control Yuan and to provide for a fully compliant Paris Principles institution by amendments to the Organic Law of the Control Yuan and to the Control Act.
78. In arriving at that conclusion the Task Force recognises that the 'Paris Principles' are very broad precisely because each country has its own unique Constitution and legal foundations. As others have done, Taiwan will have to:
 - improvise
 - extend a good-will interpretation of constitution, conforming to its core values to protect and promote human rights
 - through the definition of its competencies, define the interface between the NHRI with other governmental bodies, so as to conform to the constitutional structure regarding division of powers
 - in this last regard, although the NHRI seeks to provide authoritative opinions with regard to human rights issues to the legislative, judicial, and executive functions of the state, the advisory nature of its opinions sets a boundary to its powers. Therefore the actions of an NHRI could rarely be considered unconstitutional.

79. In making these recommendations the task force members acknowledge that:
- (i) the status of Taiwan under international law is contested by the People's Republic of China (PRC) and the Republic of China (ROC)
 - (ii) the authors of the report explicitly do not make any comment on this issue, and
 - (iii) the use of the terminology NHRI in the report should not be construed as endorsing Taiwan as a nation state.

RECOMMENDATIONS

The Taiwan NHRI Assessment Task Force recommends that:

1. Taiwan establish a fully Paris Principles compliant national human rights institution.
2. The **Control Yuan** should be provided with the mandate, functions and powers necessary to become Taiwan's national human rights institution.
3. Changes be made to the Organic Law of the Control Yuan and to the Control Act to provide the Control Yuan with both a **good governance and audit mandate** as at present, and a **human rights mandate, of equal significance**.
4. The human rights **mandate** for the Control Yuan must specify the duty to both protect and promote human rights; and it must cover civil and political, economic, social and cultural rights, all sectors of society and all people in Taiwan.
5. The law should ensure that the Taiwan national human rights institution has the powers to fulfil all the **functions** required of a Paris Principles compliant institution including 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 officials and the wider community; and dealing with complaints.
6. The law should further require that the **internal structures** and **ways of working** of the Control Yuan fully reflect the equal status of the good governance and human rights mandates and functions.
7. A review of the Organic Law of the Control Yuan and the Control Act to determine whether further **guarantees of independence** should be included in order to meet criteria under Paris Principles including appointments and dismissal provisions, and a specific duty to act independently.
8. **Appointments procedures** to the Control Yuan for both good governance and human rights mandates should be provided for in law and be **open and transparent**.
9. Appointments and appointment criteria must reflect the **pluralism and diversity** of Taiwanese society.
10. Criteria for half of the members of the Control Yuan must include **human rights expertise and experience**.
11. **Resourcing** of the human rights mandate should be sufficient to allow it to be accessible to people throughout Taiwan by the most efficient and effective means.
12. In fulfilling its human rights mandate and carrying out its functions, the Taiwan national human rights institution must have regard to the Paris Principles expectation that a NHRI will **consult and cooperate with Non-Governmental Organisations (NGOs) and Civil Society Organisations (CSOs)**.

NEXT STEPS

The Task Force submits this report to Covenants Watch and the Presidential Office Human Rights Consultative Committee. We respectfully suggest that it be shared with those who participated in the Consultations.

We have incorporated the welcome comments, corrections and suggestions which were received on the first draft. We look forward to learning the outcome of the discussions generated by the report and any decisions taken.

Both FORUM-ASIA/ANNI and the APF are committed to continuing support of Taiwan in the process of establishing a NHRI.

Task Force Team members are grateful to have been given the honour of undertaking the responsibility to report on the desirability, feasibility and options for the establishment of a Paris Principles compliant NHRI and thank those responsible for this opportunity.

APPENDIX 1: CONCEPT NOTE

1. PROJECT OUTLINE

Name:	An assessment tour to Taiwan to help evaluate the process of establishing a National Human Rights Institution (NHRI)
Submitted by:	Covenants Watch, Taiwan
Date of Submission:	May 25, 2017
Contact:	Yibee Huang (yibee.huang@gmail.com) Song-Lih Huang (songlih@gmail.com)

2. PURPOSE

The Covenants Watch (Taiwan) wishes to invite Mrs. Rosslyn Noonan to lead a task force to Taiwan for a one-week visit to conduct an assessment of the on-going process of establishing an NHRI. Mrs. Noonan, with her extensive experience in evaluation of NHRIs worldwide, may contribute to evaluate the perception among key stakeholders the desirability and feasibility of setting up such an institution; she may also provide expert opinions on the several proposals that are currently under consideration in terms of compatibility with the Paris Principles. During the working period in Taiwan, the President's Office will invite the task force to brief the Presidential Office Human Rights Consultative Committee (POHRCC), hosted by the chairperson Vice President Chen. The Covenants Watch and POHRCC extend their welcome to Mrs. Noonan and the task force with the understanding that the mission is under the auspices of Asian Forum for Human Rights and Development (FORUM-ASIA), the Asian NGO Network on NHRIs (ANNI), and the Asia Pacific Forum of NHRIs (APF).

3. BACKGROUND INFORMATION

Taiwan's civil society began to advocate the establishment of NHRI in 1999. The government prepared the organic law and function law for a National Human Rights Commission (NHRC) in 2002, but was greeted by opposing opinions. The interest in the NHRI waned afterwards, but was rekindled by the passage and enforcement in 2009 of "The Act to implement ICCPR and ICESCR", and the ensuing efforts by the government to meet international human rights standards. A task force was formed within the POHRCC to evaluate the establishment of the NHRI. The conclusions in 2014 were: (1) Taiwan should establish an NHRC, and (2) the NHRC can be set up either in the President's Office, in the Executive Yuan, or as a stand-alone commission outside of the 5-Yuan structure of the government.⁴ On the other hand, the Control Yuan handed in a separate proposal to the POHRCC in 2016 to set up NHRC within the existing Control Yuan structure (i.e., all 29 Control Yuan members serving simultaneously as Human Rights Commissioners).

In addition to the four proposals received by the POHRCC, two legislators, Legislator Yu and Koo had independent bills in the Legislative Yuan. Yu's bill (in 2014 and again in 2016) was to set up NHRC in the President's Office, while Koo's bill (2016) was to designate 11 of the Control Yuan members as full-time

⁴ The Yuan is the term for the highest organization of each of government's branches. There are five Yuans in Taiwan's government: the Legislative Yuan, Executive Yuan, Judicial Yuan, Control Yuan, and Examination Yuan. The Control Yuan is composed of 29 Control Yuan members who serve ombudsmen functions. The Examination Yuan sets standards and conducts evaluation for the recruitment and promotion of civil servants.

Human Rights Commissioners. Details of the process can be found in Taiwan Chapter of ANNI's annual reports.

Although President Tsai promised to set up the NHRC during election campaigns, the momentum seemed to be stalled after she took office in May 2016. On January 20th this year, in response to the Concluding Observations and Recommendations of the Review of the second State Reports on ICCPR and ICESCR by a panel of independent international experts, President Tsai said that there will be a decision in 2017.

4. THE INITIATIVE

Covenants Watch (CW) and Taiwan Association for Human Rights (TAHR) are members of FORUM-ASIA and for years the main advocates for NHRI in Taiwan. The convener of CW, Mr. Song-Lih Huang, was invited to be a committee member of the POHRCC in June 2016. He proposed in a POHRCC meeting on April 6 2017 to invite Mrs. Noonan to conduct an assessment. The POHRCC welcomed the idea and agreed to invite Mrs. Noonan to brief the Committee at the end of assessment.

5. PRELIMINARY COMMUNICATION WITH FORUM-ASIA AND ANNI

Preliminary discussion took place via skype on April 25th, participated by Mrs. Noonan, Mr. Agantaranansa Juanda, Ms. Betty Yolanda, Mr. Song-Lih Huang, and Ms. Yibee Huang (CEO of CW), with the purpose of understanding the preparatory works that need to be done before the visit, the main structure of the visiting tour, as well as the extent of the assessment to be conducted.

6. PRELIMINARY COMMUNICATION WITH THE GOVERNMENT OF TAIWAN REGARDING THE ASSESSMENT

An informal communication among the President's Office, Control Yuan, the Ministry of Justice, CW, and TAHR took place on May 3rd. All parties agreed to the following:

- a. Mrs. Noonan will lead a task force including another officer (perhaps a commissioner of NHRC in the Asia Pacific region) and up to 2 (two) individuals from ANNI Secretariat (FORUM-ASIA).
- b. The visit will be one-week long towards the end of July, such as the week July 24th to 28th.
- c. The process is of the nature of consultation and assessment; it is not the accreditation of any existing institution in Taiwan.
- d. The invitation letter to the task force will be issued by Covenants Watch.
- e. The government will provide administrative assistance during the preparatory and the consultation stages, including the arrangement of consultations with relevant officials of the Ministry of Education, Administration of Police, and Administration of Correction.
- f. The ministry of Justice and the Control Yuan will start the translation and compilation the necessary documents (relevant laws and country reports).
- g. The President's Office will help arrange a courtesy visit to VP Chen at the beginning of the assessment, and a briefing to VP Chen and POHRCC at the end.
- h. The government will jointly provide partial financial support, with an upper limit of USD 5,000. It is understood that FORUM-ASIA/ANNI will provide additional funding, and CW might seek for further support from Taiwan Foundation for Democracy.
- i. The CW will be the focal point of contact for all parties.

APPENDIX 2: CONSULTATIONS

THE CONSULTATION PROGRAM

	Morning	Afternoon	Evening
Monday July 24	NGOs: <ul style="list-style-type: none"> • Human Rights NGOs (1) • Gender Equality NGOs (2) 	Workshop at the Legislative Yuan	NGOs Dinner
Tuesday July 25	Ministry of Education Ministry of the Interior	NGOs: <ul style="list-style-type: none"> • Indigenous Rights and Migrant Workers (3) • Rights of Persons with Disabilities (4) 	
Wednesday July 26	Judicial Yuan	Control Yuan	Legal scholars and NGO representatives
Thursday July 27	Vice President Ministry of Justice (and Agency of Correction)	Legislative Yuan: <ul style="list-style-type: none"> • New Power Party • Legislator Yu • Secretary General 	
Friday July 28	Press Conference	Department of Gender Equality	

DEPARTMENTS AND PERSONS IN CONSULTATION

Monday July 24

Morning

Consultation with NGOs (1):

- Taiwan Association for Human Rights, Mr. Shih
- Judicial Reform Foundation, Secretary General Mr. Kao
- Taiwan Alliance of Anti-Forced Eviction, Ms. Kao
- Environmental Jurists Association, Ms. Lin
- Serve the People Association, Taoyuan, Mr. Wang

Consultation with NGOs (2):

- Awakening Foundation, Senior Researcher, Ms. Tseng
- Taiwan Alliance to Promote Civil Partnership, CEO, Ms. Hsu

Evening NGOs dinner

- Mr. Wellington Koo, Previous Legislator
- Mr. Yung-Cheng Kao, Human Rights Lawyer
- Mr. Szu-Chien Hsu, Taiwan Democracy Foundation
- Mr. Fort Fu-Te Liao, Professor, Academia Sinica

Tuesday July 25

Morning

- Ministry of Education, hosted by Secretary General Mr. Zhu Nan-Hsien
- Ministry of the Interior, hosted by Deputy Minister Lin Tsi-Ling, later joined by Minister Yeh

Afternoon

Consultation with NGOs (3):

- TransAsia Sisters Association
- Association for Taiwan Indigenous Peoples' Policy
- Indigenous Youth Front

Consultation with NGOs (4):

- Access to all in Taiwan
- Independent Living Association
- Taiwan Association for Disability Rights
- Disabled Children's Rights Advocacy Alliance in Taiwan
- Taiwan Epilepsy Association

Wednesday July 26

Morning

- Judicial Yuan, Hosted by President and vice President of Judicial Yuan

Afternoon

- Control Yuan, Hosted by President and vice President of Control Yuan

Evening dinner with legal scholars and NGO representatives

- Prof. Nigel Li
- Prof. Wen-Chen Chang
- Prof. Ful-Dien Li
- CEO, Taiwan Alliance to End the Death Penalty
- Secretary General, Taiwan Association for Human Rights

Thursday July 27

Morning

- President Office, hosted by Vice President Chen
- Ministry of Justice, hosted by Deputy Minister (Ming-Tang Chen), Department of Legal System (Director Lu) and Agency of Corrections (Deputy Director)

Friday July 28

Morning

- Press Conference

Afternoon

- Department of Gender Equality, Executive Yuan, hosted by Director (Hsui-Chen Wu)

APPENDIX 3:

‘PARIS PRINCIPLES’

PRINCIPLES RELATING TO THE STATUS OF NATIONAL INSTITUTIONS (THE ‘PARIS PRINCIPLES’)

United Nations General Assembly resolution 48/134 of 20 December 1993.

Competence and responsibilities

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

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

Composition and guarantees of independence and pluralism

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

Methods of operation

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

- (a) Freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner;
- (b) Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;
- (c) Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations
- (d) Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly convened;
- (e) Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions;

- (f) Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular ombudsmen, mediators and similar institutions);
- (g) In view of the fundamental role played by the nongovernmental organizations in expanding the work of the national institutions, develop relations with the nongovernmental organizations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.

Additional principles concerning the status of commissions with quasijudicial competence

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

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

APPENDIX 4:

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