

10. ADVISORY COUNCIL OF JURISTS



THE ASIA PACIFIC FORUM
OF NATIONAL HUMAN RIGHTS INSTITUTIONS

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

FORUM COUNCIL MEETING PAPER

TITLE:	Advisory Council of Jurists (ACJ) and the reference on torture
SUMMARY OF ISSUE:	<p>At APF8 Forum Councillors approved that the next reference to the ACJ should be on the prevention of torture during detention. The APF secretariat distributed draft terms of reference on this topic to all Forum Councillors on 10 August.</p> <p>Forum Council comments/suggestions on the draft terms of reference have now been incorporated into the current attached draft.</p>
RECOMMENDATION:	That Forum Councillors consider the attached draft terms of reference and modify/approve them.
RELEVANT CONSIDERATIONS: (Policy, staffing, expenditure, political etc)	Policy, staffing and expenditure considerations are set out in the Business Plan.
Submission prepared by:	Director, secretariat
Forum Councillor or officer responsible:	Director, secretariat

10.1 Draft Terms of Reference on Torture

The Asia Pacific Forum of National Human Rights Institutions refers to the Advisory Council of Jurists to advise and make recommendations as to international law, instruments and standards relevant to torture and other cruel, inhuman and degrading treatment or punishment ('ill-treatment').

In particular the Advisory Council of Jurists is asked to consider:

(i) how international human rights instruments, standards and mechanisms define "torture", and other forms of ill-treatment, including with reference to detention, interrogation, medical experimentation and facilities, corporal punishment, gender specific forms, sexual abuse;

(ii) the prohibition on torture and other forms of ill-treatment as a rule of customary international law; **(Note – the Indian Commission requested further elaboration of the term ‘customary’ in the phrase “customary international law”. In response the APF suggested that point (ii) could be phrased as follows – (ii) the prohibition on torture and other forms of ill-treatment as a rule of customary international law which is reflected in the jurisprudence of international, regional and national tribunals and the statements of academics and such international bodies as the Human Rights Committee and the Committee Against Torture) (India/APF).**

(iii) whether the prohibition on torture and other forms of ill-treatment can be derogated from in certain circumstances;

(iv) the nature and scope of procedural guarantees and other safeguards stipulated by international human rights law aimed at preventing acts of torture and other forms of ill-treatment;

(v) the safeguards stipulated by international human rights law and standards to ensure that any statement which is established to have been made as a result of torture and other forms of ill-treatment shall not be invoked as evidence in any proceedings;

(vi) remedial measures that should be made available to victims of torture and other forms of ill-treatment, including complaints systems, compensation mechanisms **and medical rehabilitation** (Philippines);

(vii) the nature of the protection to be afforded persons being forcibly returned to another country;

(viii) international humanitarian law and torture and other forms of ill-treatment in times of **domestic and international** (Philippines) conflict;

(ix) the jurisdiction of national and international tribunals to consider cases of alleged torture and other forms of ill-treatment **and to monitor intervention (e.g. UN or NATO) forces** (Philippines); and

(x) the nature and scope of the obligation to protect against violations by non-state actors.

Relevant international law includes but is not limited to:

- (i) Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol;
- (ii) International Covenant on Civil and Political Rights;
- (iii) Convention on the Rights of the Child;
- (iv) the Geneva Conventions of 12 August 1949 and their Protocols;
- (v) Rome Statute of the International Criminal Court;
- (vi) Declaration on the Protection of All Persons from Being Subjected to Torture;
- (vii) Principles on the Effective Investigation and Documentation of Torture;
- (viii) Principles of Medical Ethics and Torture;
- (ix) **Principles for the Protection of All Persons under Any Form of Detention or Imprisonment** (Australia);
- (x) **Standard Minimum Rules for the Treatment of Prisoners** (Australia);
- (xi) **Rules for the Protection of Juveniles Deprived of their Liberty** (Australia);
- (xii) **Code of Conduct for Law Enforcement Officers; and** (Australia)
- (xiii) **Basic Principles on the Use of Forces and Firearms by Law Enforcement Officials** (Australia).

(NOTE – The Indian Commission felt that since some countries such as India are not signatories to the Rome Statute or ratified the international Convention Against Torture, they questioned whether these clauses need to be included in the draft terms of reference to the ACJ. In response the APF replied that because the Background Paper and the report that the ACJ will ultimately write are intended to be useful to all APF member institutions the terms of reference must, by necessity, be quite general to ensure that they are relevant to all members. However the section dealing specifically with India must also recognise that India is not a State party to the above documents and the legal ramifications that flow from this).

The Advisory Council of Jurists may also wish to consider regional standards and other initiatives including, but not limited to:

- (i) European Convention for the Prevention of Torture and Inhuman or Degrading Treatment and Punishment;
- (ii) European Prison Rules;
- (iii) Inter American Convention to Prevent and Punish Torture; and
- (iv) the Robben Island Guidelines.